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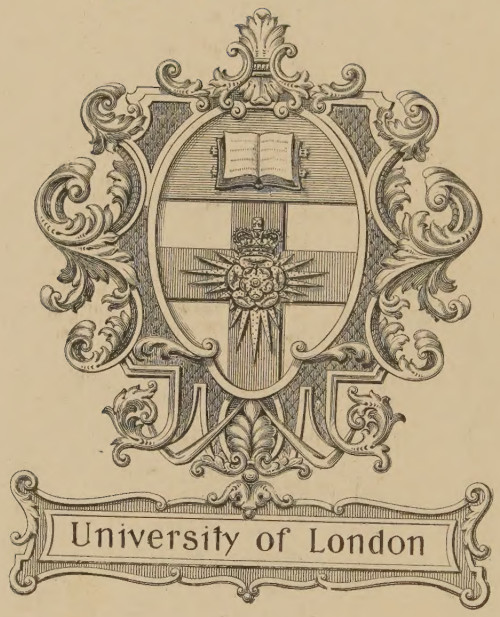

EAST INDIA.

COPIES

OF THE

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

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East India House,
6 April 1842.

JAMES C. MELVILL.

Ordered, by The House of Commons, *to be Printed,*
12 *August* 1842.

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Examiner's Office, East India House, 8 February 1841.

T. L. Peacock,
Examiner of India Correspondence.

— (B.) —

LIST of SPECIAL REPORTS from the INDIAN LAW COMMISSION.

No.	Page.	Date of Commissioners' Report.	SUBJECT.	When Recorded.	Remarks.	When Reported to Cou
I.	307	4 April 1840	Printing Report on Slavery - -	27 April 1840 (No. 8)	reported to Court -	- Des. No. 19 of 18 dated 16 Nov.
II.	308	11 July —	- - Questions which occupy the immediate attention of the Commissioners.	3 Aug. 1840 (No. 2)	not yet reported.	
III.	314	— 1837	- - Affrays concerning Indigo and pounding Cattle.	17 — 1840 (No. 10)	- ditto.	
IV.	321	14 Aug. 1840	Transportation for limited terms -	7 Sept. 1840 (No. 10)	reported to Court -	- Des. No. 19 of 18 dated 16 Nov.
V.	323	2 — —	Madras Judicial System - -	5 Oct. 1840 (Nos. 37 & 38)	not yet reported.	
VI.	347	31 Oct. —	- - Question of rendering lands purchased under fictitious names liable to forfeiture, including lands of Native Officers, &c.	23 Nov. 1840 (Nos. 12 to 22)	- ditto.	
VII.	439	- — -	- - On the petitions of the East Indians and Armenians.	not recorded -	- - under consideration of Government; printed copy sent.	
		21 Feb. 1837	Stamp Act - - - - -	6 Mar. 1837 (No. 20)	- - under consideration of Governor in General Department; copy not sent.	
		20 July —	- - Modification of Sect. 3, Reg. XIII. 1832, Madras Code.	- - -	- - under consideration of Governor in Legislative Department; copy not sent.	

East India House, 30 March 1841.

T. L. Peacock,
Examiner of India Correspondence.

— (C.) —

LIST of SPECIAL REPORTS from the INDIAN LAW COMMISSION furnished during the Year 1841.

No.	Page.	Date of Commissioners' Report.	SUBJECT.	When Recorded.	Remarks.	When Reported to Cou
I.	470	15 Jan. 1841	Report on Slavery in India - -	15 Feb. 1841 (Nos. 1 to 3)	reported to Court -	- - Des. No. 3, of 18 dated 8 Feb. Des. 8, of 1841, dated May. Des. No. 19 1841, dated 6 Sept.
II.	516	22 May —	Examination of absent Witnesses -	14 June 1841 (Nos. 4 & 5)	- - Act VII. of 1841, passed; reported to Court.	- - Des. No. 17, of 18 dated 16 Aug. pa 14 to 17.
III.	533	10 July —	Madras Judicial System - -	29 Nov. 1841 (Nos. 1 to 3)	not yet reported.	
IV.	592	20 Nov. —	Slavery in the Straits Settlements -	6 Dec. 1841 (No. 11)	- ditto.	
V.	596	4 Dec. —	Special Appeals - - - -	20 Dec. 1841 (No. 22)	- - Act under consideration; not yet reported to Court.	
		21 Feb. 1837	Stamps - - - - -	6 Mar. 1837 (No. 20.)	- - under consideration in the General partment; copy not sent.	
		20 July —	- - Modification of Sec. 3, Reg. XIII. 1832, Madras Code.	- - -	- - under consideration in the Legislative partment; copy not sent.	

East India House, 6 April 1842.

T. L. Peacock,
Examiner of India Correspondence.

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

— (A.) No. I. —

JUDICIAL SYSTEM OF THE MADRAS PRESIDENCY,

And Proposition for dispensing with the necessity of requiring Futwas from Mahomedan Law Officers.

No. I.
Judicial System of the Madras Presidency.

Legis. Cons.
3 June 1839.
No. 50.

(No. 18.)

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to the Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Indian Law Commissioners to acknowledge the receipt of your letter, dated the 4th of July 1836, enclosing several papers on the subject of certain proposed changes in the judicial system.

2. The first four paragraphs of your letter relate to proposed modifications in the judicial system under the Madras presidency. It appears that the government of Madras were required by the government of India to take into consideration a scheme of reform, involving the abolition of the provincial courts of appeal and circuit.

That government, after corresponding on the subject with their Sudder and Foujdarry Adawlut, communicated the opinions of the judges of those courts, and their own opinions on that subject, to the government of India. The papers thus received from Madras have been sent to the Law Commission, who are directed, after due consideration of the facts and arguments stated in them, to report their opinion as to whether it is expedient to adopt the contemplated changes in the tribunals of that presidency.

In those papers various changes are suggested by the judges as well as by the Honourable the Governor of Madras in Council, as means to effect the object which the Governor-general of India in Council had in view. But the Law Commission conceive that, while it was intended that their attention should be given to the whole subject, and all that has been advanced upon it, the measures recommended by the government of Madras are the changes to which your letter more particularly refers.

3. The Law Commission are further required, of course on the supposition of their being in favour of those changes, to state whether, in their opinion, the introduction of them ought to be immediate, or to await the enactment of the new code of procedure. And their consideration is especially called to the question, whether it is not expedient immediately to suspend the jurisdiction of the provincial courts, in so far as regards the receiving of fresh suits or appeals.

4. The Law Commission are strongly inclined to the opinion, that when the judicial establishments of the Madras presidency come under revision, in the course of the labours of this Commission, it will not be found advisable to maintain the provincial courts of appeal and circuit. But they are not prepared at the present stage of their proceedings to say what particular arrangements they may consider as the most advantageous for the performance of the duties which now belong to those tribunals.

5. What appears to them to be the greatest difficulty that will probably be met with in revising this part of the Madras system is to provide, if it be deemed necessary, when the provincial courts are taken away, that local supervision by higher officers than zillah judges, to which the Madras government attaches so much importance.

6. With great respect for the opinion of that government, the Law Commission

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Judicial System of the Madras Presidency.

mission can by no means approve of the measures which they recommend for this purpose.

7. The appointment of five officers, to be designated Commissioners of Revenue and Circuit, is proposed. These officers, besides being charged with the powers of supervision and control now vested in judges on circuit, and in the collective provincial court, are to be Commissioners under Regulation VIII. of 1822, of the Madras Code; they are to hear appeals from sentences passed by collectors under Regulation IX. of 1822; they are to exercise any portions of the functions of the Sudder Court which that court may think it proper to delegate to them; and lastly, they are to perform any other duties on which the executive government may at any time think fit to employ them.

8. The duty of the Commissioners under Regulation VIII. of 1822, is to conduct investigations, when deemed necessary by the government, into the conduct of public officers in any of the civil departments.

9. What gave occasion to the enactment of that Regulation was, as stated in its preamble, that certain rules which were before in force, prescribing a particular course of inquiry when charges, or information of corruption, embezzlement, or other high misdemeanors were brought against European public officers, had been found to be inconvenient in practice, and otherwise objectionable. It was therefore enacted (sect. 3), that in such cases it should rest with the Governor in Council to determine by what persons and in what way the invesgation should be made, in consideration of the circumstances of each case.

10. It is obvious that without an entire departure from the principle thus professed and acted on, wisely and beneficially, in the opinion of the Law Commission, and without a return to the course which was formerly tried and found not to answer, the conduct of such inquiries could not be made a part of the regular duties belonging to the office of the proposed new Commissioners. Supposing, then, this not to be done, the government no doubt might, in the exercise of their discretion, occasionally employ in that way the gentlemen holding the office of Commissioners. But the Law Commission cannot look on this as a consideration of any force in favour of instituting that office. Investigations of the kind in question are not very frequently requested; nor is the government, they believe, ever at a loss, when occasions for them arise, to find fit persons to conduct them. Even if the government, the law remaining as at present, were to make it a general rule to employ the Commissioners on such occasions, it is to be hoped that the occupation thus afforded them would commonly be very limited; while there is reason to apprehend that it would sometimes interfere prejudicially with the performance of their proper duties, if these should be of that importance which alone could justify the instituting of their office.

Besides, in the opinion of the Law Commission, such a general rule would not in itself be of advantage, but rather the reverse.

11. The appeal from sentences passed by collectors, under Regulation IX. of 1822, lies at present to the Board of Revenue, and with far greater propriety, as the Law Commission think, than it would to the proposed Commissioners. Under the provisions of that Regulation, official delinquencies, which it is not deemed advisable to make matters of prosecution in the regular criminal courts, are summarily inquired into and visited with correction, within moderate assigned limits, by the official superiors of the offenders. The appeal now in question is an appeal from what is done in this manner, and differs as much from an appeal in the regular course of the ordinary judicial administration by the courts, as the proceedings of the collector differ from a regular trial by one of those tribunals. If the authority appealed to, the Board of Revenue, do not decide in favour of the appellant, it is still open to him to seek for redress by bringing the matter before one of the regular courts, to be there inquired into; except, indeed, in cases where the government, on the representation of the revenue authorities, may think fit to appoint a special Commissioner to conduct the trial. To what extent the functions of the criminal courts ought to be performed by the heads of departments, where their subordinates are concerned, is an important and difficult question, into which the Law Commission do not at present think it necessary to enter.

But as long as the system established by this Regulation is at all upheld, the whole business ought in every case to be kept within the executive department of government, until the period arrives when it is made the subject of a regular judicial inquiry, either by the sueing of the accused for redress, or by the government's appointing a Commissioner.

In

In these remarks the Law Commission assume that it is not intended to place the proposed new officer generally as a part of the regular executive establishment between the collector and the Board of Revenue; but that possibly may be the intention of the Madras government; the proposed resignation of Commissioner of Revenue and Circuit seems to give colour to this supposition.

If it is so, then the Law Commission beg leave strongly to deprecate such a measure; that union of fiscal with judicial functions, which in some parts at least of India appears to be necessary, but which is, at best, a necessary evil, would thereby be, without the slightest necessity, made closer than it has ever yet been.

In the opinion of the Law Commission it would add a cumbrous link to a chain that is already quite long enough; it would lower the position of the collectors, damp their zeal, and paralyse their energies; it would impair the efficacy of the control exercised over the proceedings of that most important class of public officers by the Board of Revenue; it would not supply any other control that would be in the whole beneficial; it would multiply correspondence, and generate worse than useless controversy.

Besides, whether the Commissioners were generally interposed between the Board and the collectors or not, the duty of hearing these appeals would not be very congruous with the functions in the general system of judicature, which it is proposed to confer on the same Commissioners.

12. But it may be said, that though the appeal in the first instance from sentences passed by collectors, could not with advantage be made to lie to the new Commissioners, yet when government saw occasion to appoint a Commission for the purpose of making a regular judicial inquiry into an appeal case, the new Commissioner might be employed. On this the Law Commission would only observe, that the remarks which they have already submitted on the proposal to employ those officers as Commissioners under Regulation VIII. of 1822, appear to be also applicable to this mode of employing them, as far as is necessary to show that but very little advantage could be derived from it.

13. The Law Commission do not think that in any system of judicial tribunals which it may be deemed expedient to adopt, it can be advisable to have a class of functionaries to whom, as is recommended with regard to the proposed Commissioners, the highest court shall have power to delegate any part of their own functions which they may please; and this recommendation seems to them the more objectionable, because it is proposed that the same officers should not only be charged with the various duties already adverted to, but should further be liable to be employed in any other way the government of the presidency might at any time think fit, in any branch of the civil administration of the country. On this last suggestion, considered by itself, it may be sufficient to observe, that it would hardly be offered with especial regard to any class of officers adequately provided with appropriate duties.

14. Of the employment proposed for the Commissioners of Revenue and Circuit, the only part which the Law Commission have not in the foregoing remarks endeavoured to show to be either objectionable, or to hold out little prospect of advantage, is the duties of supervision and control (as distinguished from strictly judicial duties) now vested in the circuit judge and the Collective Circuit Court. These duties are described in Section 40 of Regulation IX., and sections 23 and 24 of Regulation X. of 1816, of the Madras Code. They are certainly not unimportant in themselves, and entrusted as they are at present to officers vested with other high functions of a kind with which they well consort, and from which those officers derive great importance in the eyes of the people, the discharge of them, as the Law Commission are inclined to believe, is on the whole attended with considerable benefit to the public; but the Law Commission doubt much whether they could be performed with the same advantage by the proposed Commissioners; and even were it certain that they could, it would not eem to the Law Commission to be advisable to set up so costly an apparatus for the purpose of doing this work.

15. At the same time the Law Commission agree with the Madras government in thinking that there would be difficulties in adopting at that presidency the system in operation at Bombay, of employing the judges of the Sudder Court to make circuits. The Madras territories are so extensive, that the Sudder judges could not, without inconvenience, periodically visit all parts of them.

16. The Madras government and Foujdarry Adawlut strongly urge the expediency of abolishing all reference to the Mahomedan law in the administration of criminal

criminal justice. This desirable object would be accomplished by the enactment of the criminal code now before the Supreme Government. In the meantime the Law Commission would not recommend that any such regulation as that of which a draft has been received from Madras, should be passed, or indeed that any change in the state of the substantive criminal law should be made, unless it were on some particular point urgently requiring alterations, for special reasons.

The Law Commission conceive, however, that the reference which the Regulations require to be made to the Mahomedan law officers might with advantage be dispensed with, at least in the Court of Foujdarry Adawlut, by an enactment, which should leave the substantive law just as it is. It has been so far dispensed with in Bengal, except in cases of murder; and the Law Commission imagine that the greater part of the existing criminal law being to be found in the Madras Code of Regulations, and the rest, with little or no exception, in recorded precedents, or in books which are readily accessible, the Madras judges would be competent to administer it without the aid of those officers.

Indeed the Law Commission are confident, that at least the judges of the Foujdarry Adawlut are so competent; and if they are, the Law Commission see no reason why this change should not, to the extent just stated, be immediately introduced. It would, they conceive, render Persian records of trials unnecessary in that court, and be attended with a considerable saving of time in the administration of criminal justice in the most important class of cases. If the measure could be extended to the courts of circuit, the advantages of it would of course be increased.

The Law Commission would not, however, recommend that any Act should be passed to carry this reform into effect in those courts, or even in the Foujdarry Adawlut, without consulting further the government of Madras.

17. The Madras government, though they are against the plan of sending judges of the Sudder Court on circuits, yet among the additional duties to be imposed on that court, on account of which they suggest an increase in the number of judges, mention the trial of crimes beyond the powers of session judges. From this it would seem to be intended, that for some crimes, in whatever part of the Madras territories they may be committed, no means of trial should be provided, except at Madras. But the Law Commission cannot believe that the Madras government really meditate such a state of things; they rather suppose that what is meant is, that the session judges should be required to refer their trials to the Foujdarry Adawlut for final decision, in some classes of cases in which such reference is not now made by the judges on circuit, whereby the duties of the Foujdarry Adawlut would of course be increased. The Law Commission thought it right to observe here, that the delay in the disposal of trials referred to the Foujdarry Adawlut has not, as they understand, been commonly so great as it appears to have been in the years 1831, 1832, and 1833.

18. Various other changes are suggested by the Foujdarry Adawlut and the Madras government. This will of course receive consideration from this Commission in revising that part of the judicial system to which they belong. None of them appear to the Law Commission to be such as it would be desirable immediately to adopt.

19. As the Law Commission are of opinion that it will ultimately be advisable to abolish the provincial courts of appeal, they have given their best consideration to the question, whether the jurisdiction of those courts should be immediately suspended, so far as regards the receiving of fresh suits or appeals.

Although it is probable that the introduction of the change of system, which shall be ultimately resolved on, might thus be in some degree expedited, they yet think it would be better on the whole to make no alteration in the existing jurisdictions while the future system is still to be formed; in other words, not to begin to make the change till it is determined what the change shall be.

It is certainly most proper that means should be taken to prevent the inconvenience which would be felt if an accumulation of arrears were allowed to take place while the business of the courts is in a state of transition from one tribunal to another; but the doing of this cannot be in the smallest degree facilitated by commencing the work at an earlier rather than at a later period. In no respect, except the probable gaining of time, would the course proposed be attended with advantage; and there are some positive objections to it, which appear to the Law Commission to be of moment. It may be assumed that the civil jurisdiction of the zillah courts will not ultimately be left as at present; it follows, that the proposed

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proposed measure would not be a mere step in effecting the introduction of a new system of jurisdiction, but would in itself set up, for a short time, a jurisdiction different not only from that which now exists, but also from that which is to be hereafter established. No change of judicature can be advisable except for the attainment of some important advantage; change, considered merely as change, is in such matters an evil; if frequent, it is a great evil. Here we should have a change which, without any apparent necessity, would create a system of jurisdiction avowedly designed to endure but a very short time.

The Law Commission fear that in a greater or less degree it would tend to unsettle the minds of people, and cause dissatisfaction among them. The Law Commission fear, too, that an additional occasion for such dissatisfaction would be given in a way which would be much to be regretted; for by making the appeal lie at once from the zillah courts to the Sudder Adawlut in all cases now appealable to the provincial courts, before the mode of conducting appeals was thoroughly reformed, much inconvenience and hardship would probably be caused to suitors. These objections to the proposed measure would hold, even if it were certain that a system in the introduction of which some advantage in point of time would be derived from that measure, will ultimately be fixed upon. As that, however, can at present be regarded as at most only highly probable, these objections hold on this account with additional force.

Another objection, too, arises from the same circumstance. In matters of this kind, a step once taken towards any object is in itself a reason, and is apt, even in the most honest minds, to be still more a motive for proceeding further in the same direction.

Whatever, therefore, the Law Commission may at present look upon as likely to be their ultimate conclusions respecting the judicial establishments of the Madras presidency, it is, in their opinion, unadvisable to adopt any important practical measure on the strength of their speculations, before that part of their labours by which those conclusions are yet to be arrived at, shall have been gone through.

20. The Law Commission will submit hereafter a full exposition of their opinions on the general subject of appeal, including the question of giving the highest appellate jurisdiction to single judges. In the meantime they respectfully recommend, that no change be made in the constitution of any of the sudder courts.

21. The original papers which accompanied your letter under reply, are herewith returned, copies of them having been kept for record in this office.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
30 May 1837.

(No. 1042.)

From *Henry Chamier*, Chief Secretary to the Government of Madras, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, dated *Fort St. George*, 30 October 1838.

Legis. Cons. 3 June 1839. No. 51.

Sir,

With reference to my letter of the 3d June 1836 (No. 489), I am directed by the Right honourable the Governor in Council to transmit to you, for submission to the Honourable the President in Council, the accompanying extract (para. 18) from a despatch from the Honourable the Court of Directors, of the 5th January last (No. 1), relative to the contemplated reforms in the judicial system under this presidency, together with a copy of the order recorded thereon by government under this date.

Judicial Dep.

I have, &c.
(signed) *Henry Chamier*,
Chief Secretary.

Judicial Department.

Legis. Cons. 3 June 1839. No. 52. Enclosure.

EXTRACT from a General LETTER from the Honourable the Court of Directors, dated 5th January 1838. (No. 1.)

18 ; also para. 39, Judicial Letter, 30 Sept. (No. 11), 1836, and 62, 16 May (No. 5), 1837. Judicial System: Correspondence with the Supreme Government relative to its reform, particularly referred to.

(Para. 18.) IT is apparent from the correspondence here referred to, that it would be desirable to abolish the provincial courts of appeal and circuit under your presidency, as well as in Bengal. Their abolition has accordingly been determined upon for the last seven years, but successive obstacles have arisen to prevent that resolution from being carried into effect.

The subject being under reference to the Governor-general in Council, we trust that, without further delay, such reform of that portion of your judicial establishments as may be requisite will now be adopted.

EXTRACT from the MINUTES of CONSULTATION, under date the 30th October 1838. (No. 1041.)

(Para. 12.) THE Supreme Government not having yet come to a decision on the important subject adverted to in this paragraph, their attention will be requested to the hope expressed by the Honourable Court therein, that no further delay will be allowed to occur in adopting such reform of that portion of the judicial establishment under this presidency as may be requisite.

(True extracts.)
(signed) *Hy. Chamier*,
Chief Secretary.

MINUTE by the Honourable *T. C. Robertson*, Esq. dated the 25th January 1839.

Legis. Cons. 3 June 1839. No. 53. Proposed Modification of the Madras Judicial System.

As this matter, which has been lying over for two years and a half, is now attracting the attention of the Honourable Court, it is absolutely necessary that some decision should be come to.

There can, I imagine, be little hesitation about agreeing to the proposals contained in paragraphs 3, 4, 5 and 6 of the letter from the Madras government, of the 3d June 1836, in so far at least as to dispense with a reference to Mahomedan law, and the translation of the proceedings into the Persian language.

It appears also, for the reason given at the end of paragraph 6, that the original proceedings ought to be sent up to the Sudder Court in the language in which they are originally reduced to writing, leaving it discretional with the superior court to cause a translation into English to be made or not, as may be thought best.

There may be a difficulty about anticipating the general criminal code by passing the proposed particular enactment of which a draft is among the papers before us, but this is a point for the more immediate consideration of Mr. Amos.

Of the objections to the proposed substitution of zillah session judges for provincial courts, the two first urged by the Madras sudder, are, as is remarked in paragraph 7 of the above letter, of little or no force.

The third objection, as observed in paragraph 8, is of more weight, and ought to make us pause before we adopt all the changes recommended in the sequel.

The Madras sudder apprehend that it will be difficult to provide a substitute for the provincial courts, as a controlling authority.

I concur in this opinion : those courts were admirably constituted for the purposes of supervision and control. If they ever worked ill, that arose from errors of patronage, not of constitution. Among other merits, they were admirably suited to admit of a partial introduction of persons not belonging to any particular service, to aid in the higher administration of justice.

An able lawyer, with little acquaintance at first with the languages and manners of the people of the country, might still have proved a most useful colleague to his brother judges of a provincial court, though he would have been lost and unable to find his way as a solitary judge of a zillah.

This opinion I expressed before the provincial courts under this presidency were abolished in 1831 ; and retaining the same opinion still, confirmed by the laxity, disorder, and perplexity that have followed from that measure in this quarter, I am most unwilling that it should be extended to Madras.

The

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The last objection as stated in paragraph 9, resolves itself into a mere formal difficulty, easily to be got rid of.

The magistrates at Madras being all collectors, exercise little judicial power, and having secured criminals, make them over for primary investigation to the criminal judge, who can sentence to the extent of seven years' imprisonment, but must commit for trial before the judge of circuit, when a severer punishment seems to be required.

The disadvantages attending this mode of procedure are clearly detailed in paragraphs 9, 10, and 11. The remainder of the letter contains some judicious suggestions for the assimilation of the Madras system to that which obtained under this presidency at the date of the despatch, but has since been considerably modified.

The propriety of adopting these suggestions can be taken into consideration when we shall have to come to a determination upon the subject of retaining or abolishing the provincial courts.

(signed) *T. C. Robertson.*

Legis. Cons. 3 June 1839. No. 54. Proposed Modification of the Madras Judicial System.

MINUTE by the Honourable *W. W. Bird*, Esq. dated the 24th May 1839.

NOTHING, I apprehend, can be done at present relative to the contemplated reforms in the judicial system under the presidency of Fort St. George. The question has, as observed by Mr. Robertson, been long under consideration; but by a letter from the secretary to the Law Commission, dated the 30th of May 1837, written in reply to Mr. Secretary Macnaghten's communication of the 4th of July 1836, which has never yet been brought upon record, it appears that in the opinion of the Commissioners it is not advisable to begin to make any change in the system in question, until their inquiries shall be sufficiently advanced to enable them to say what arrangements should be adopted instead of it. They deprecate making any alteration in the existing establishments while the future system is still to be prepared.

That part of their labours by which their conclusions are to be arrived at respecting the changes to be made in the Madras judicial system, have not yet been gone through, and until they have, no alteration should, in their opinion, be attempted. Any change introduced in anticipation of what is likely ultimately to be fixed on, might differ not only with that which now exists, but also from that which may be hereafter established, and such a change, without attaining any important advantage, would, in a greater or less degree, tend to unsettle men's minds and give rise to much dissatisfaction.

Of these objections the Court of Directors were not aware at the date of their despatch to the government of Fort St. George, referred to in Mr. Chief Secretary Chamier's letter, dated the 30th of October last, or probably they would not have expressed a desire that the change in question should be partially carried into effect, before the arrangements are completed which are under the consideration of the Law Commission.

My own opinion is, for the reasons assigned by the Madras government, in Mr. Chamier's letter of the 30th June 1836, that the provincial courts of appeal and circuit under that presidency should be abolished, but I agree with the Law Commission that it should not be done prematurely, and that it would be better to wait until all the parts of the system to be finally adopted can be carried at once into effect.

I also agree with the Law Commission in regard to the recommendation contained in the 16th paragraph of Mr. Grant's letter, respecting the reference which the Madras Regulations require to be made to the Mahomedan law in the administration of criminal justice. That law might, I conceive, be dispensed with at Madras, to the same extent as it has been dispensed with in Bengal, without the smallest inconvenience, and I propose that a draft Act be prepared and transmitted, together with a copy of Mr. Grant's letter for the consideration of the government of Fort St. George, with a view to the accomplishment of that object.

(signed) *W. W. Bird.*

(No. 224.)

Legis. Cons. 3 June 1839. No. 55.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

Legislative Dep.

WITH reference to the letter of the officiating secretary to the Indian Law Commission, dated the 30th of May 1837, communicating the opinion of the Commissioners on certain proposed changes in the Madras judicial system, I am directed by the Honourable the President in Council to forward, for the consideration of the Commissioners, the accompanying copy of a letter from the chief secretary to the government of Fort St. George, dated the 30th of October 1838, enclosing an extract from a despatch from the Honourable the Court of Directors, dated the 5th of January 1838, (Judicial Department, No. 1,) on the same subject.

2. When the Honourable Court wrote that despatch, they had not been made acquainted with the sentiments of the Law Commissioners, conveyed in their officiating secretary's letter of the 30th of May 1837.

Those sentiments were opposed to the introduction at that moment of such a change in the Madras judicial system as would be involved in the abolition of the provincial courts, and the appointment of Commissioners, before the Law Commission might be able to report what system of judicial administration they might recommend to be finally settled for the provinces under the Madras government. The President in Council therefore does not propose to introduce the change that had been under contemplation, or any change of like extent, until the Law Commission may report that the objections they have noticed are, in their opinion, removed by the progress made in their labours. With reference to the sentiments of the Honourable Court, as expressed in the extract above alluded to, and to the importance of the question, the President in Council recommends this subject to the early attention of the Law Commission.

3. The President in Council has consulted the Madras government on the recommendation made in paragraph 16 of their officiating secretary's letter above referred to.

4. In the 20th paragraph of that letter it is said, "the Law Commissioners will submit hereafter a full exposition of their opinions on the general subject of appeal, including the question of giving the highest appellate jurisdiction to single judges. In the meantime they recommend that no change be made in the constitution of any of the sudder courts."

The President in Council presumes from this, that it was the intention of the Law Commissioners to treat this subject separately, before sending up their project of a code of procedure, or their outline of such a code, as proposed in their letter of the 23d of February 1838, and approved by government in Mr. Officiating Secretary Mangles' letter of the 16th April 1838. You are requested to state, for the information of his Honor, whether such be still the intention of the Law Commission.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Council Chamber, 3 June 1839.

(No. 345.)

Legis. Cons. 3 June 1839. No. 56.

From *J. P. Grant* Esq. Officiating Secretary to the Government of India, to *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, dated *Fort William*, 3 June 1839.

Sir,

Legislative Dep.

I AM directed to acknowledge the receipt of your letters of the 3d June 1836, and 30th October last, with their respective enclosures, and in reply, to forward to you the accompanying copy of correspondence with the secretary to the Indian Law Commission of this date, and to state that, with reference to paragraph 16 of the letter from the officiating secretary to the Indian Law Commission, dated the 30th of May 1837, the Honourable the President in Council begs that he may be favoured with the opinion of the Right Honourable the Governor

in

in Council, after consulting the Sudder Court on the recommendation therein made.

2. His Honor in Council also requests that the Sudder Court may be called upon for the draft of an Act, such as they may think fitted for carrying the recommendation in question into effect, in case the government of India may determine on so doing.

I have, &c.
(signed) *J. P Grant*,
Officiating Secretary to the Government of India.

(No. 662.)

Legis. Cons. 9 Sept. 1839. No. 37.

From *H. Chamier*, Esq. Chief Secretary to the Government, Fort St. George, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, dated *Fort St. George*, 12th August 1839.

Sir,

Judicial Dep. 25 July 1839. No. 139.

Para. 1. With reference to your letter of the 3d June last, No. 345, I am directed by the Right Honourable the Governor in Council to transmit, for submission to the Honourable the President in Council, the accompanying copy of a letter from the acting register of the Foujdaree Udalut and of the draft Act received with it, for dispensing with the reference required by the Regulations to be made to the Mahomedan law officers in the Court of Foujdaree Udalut, and in the courts of circuit.

2. The expediency of abolishing all reference to the Mahomedan law in the administration of criminal justice has already been recommended by this government, in paragraph 4 of my letter of the 3d June 1836, No. 489, and the Right Honourable the Governor in Council entirely concurs with the judges in opinion, that no material objection exists to the immediate adoption of this measure in the Court of Foujdaree Udalut. Although the judges do not pronounce with the same confidence on the extension of the measure to the courts of circuit, yet his Lordship in Council has no reason to apprehend that any serious disadvantage will be experienced from such extension, and the administration of justice will unquestionably be greatly expedited, and most materially simplified.

I have, &c.
(signed) *H. Chamier*, Chief Secretary.

(No. 139.)

Legis. Cons. 9 Sept. 1839. No. 38. Enclosure.

From *T. H. Davidson*, Esq. Acting Register, to the Chief Secretary to Government.

Sir,

1. I am directed by the judges of the Court of Foujdaree Udawlut to acknowledge the receipt of the Order of Government (No. 543), under date 8th instant, and of the papers therewith transmitted.

2. The judges are of opinion that no material objection exists to the adoption of the recommendation in paragraph 16 of the letter from the officiating secretary to the Indian Law Commissioners, dated 30th May 1837, that the reference required to be made to the Mahomedan law officers of the Foujdaree Udawlut, in trials referred for their final judgment, should be dispensed with; and it further appears to them that a provision to this effect will be necessary, in order to give effect to the intentions of the Supreme Government in respect to the judicial administration in certain parts of Ganjam and Vizagapatam, because the provisions of Clause 2, Section 2, Regulation I. of 1818, render a futwa indispensable in cases not specifically provided for by the Regulations.

3. Under the provisions of the Act No. XXX. of 1836, the Court of Foujdaree Udawlut considered themselves competent to proceed in the manner prescribed in Clause 1, Section 2, Regulation I. of 1818.

4. The judges have the honour to submit the draft of an Act, of which sections 1 and 2 are intended for the above purpose, in explanation of which it is to be observed, that in the instance of any offence which may never have formed the subject of a trial by the Foujdaree Udawlut, it would be open to the court to ascertain from their Mahomedan law officers whether or not it were punishable by that law, and that cases of abortion, rape, sodomy, arson, conspiracy, embezzlement,

ment, fraud, kidnapping children, and wounding, which comprise all offences ordinarily the subject of referred trials, and not expressly provided for by penalties prescribed in the Regulations of this government, are at present punishable to the extent provided in Clause 3, Section 7, Regulation XV. of 1803.

5. As to the expediency of adopting the further suggestion of the Law Commissioners, that the requisition of a futwa by the courts of circuit should be dispensed with, the judges cannot pronounce with the same confidence. The measure is rather thrown out for consideration than positively recommended by the Law Commissioners, and the judges are not certain that the call upon them for the draft of an Act is intended to include the preparation of the provisions necessary in order to its adoption.

6. The judges observe that the Court of Directors in the concluding paragraph of their letter, No. 5, dated 17th September 1834, insist upon there being "at least one native assessor" to assist the judge of circuit in the event of the discontinuance of the Mahomedan law officers, and advert to the provisions on the subject contained in Bengal Regulation VI. of 1832.

7. The judges of the Foujdaree Udawlut are not prepared to recommend the extension of these provisions to this presidency, and consider the Mahomedan law officers to be more competent as assessors than other natives of the provinces of whose services the judge of circuit would generally be able to avail himself.

8. Should the government of India determine upon abolishing the present reference to the Mahomedan law officer by the courts of circuit, it appears to the judges that the measure might be effected by adding to the Act for the Foujdaree Udawlut the provisions of sections 3, 4, and 5 of the annexed draft; in explanation of which it appears sufficient to observe, that under the existing rules, punishment to the extent provided by Clause 7, Section 2, Regulation XV. of 1803, is adjudicable by the Court of Circuit for the offences mentioned above, and for theft, exceeding the jurisdiction of the criminal judge; and that on any new case that might arise a reference could be made to the Foujdaree Udawlut to ascertain whether or not the act charged were punishable under the Mahomedan law.

(signed) *T. H. Davidson*, Acting Register.

Foujdaree Udawlut, Register's Office,
25 July 1839.

I. It is hereby enacted, that in trials referred by the courts of circuit the Court of Foujdaree Udawlut at Madras shall not take a futwa from their law officers.

II. And it is hereby enacted, that in such trials the said court shall be competent to sentence the prisoners, on conviction, to suffer the punishment prescribed by the Regulations of the Madras code, in cases specifically provided for, and in all other cases punishable under the Mahomedan law to pass sentence of punishment to the extent authorised by Clause 3, Section 7, Regulation XV. of 1803, of that code.

III. And it is hereby enacted, that in trials before the courts of circuit, under the Madras presidency, no futwa shall hereafter be taken.

IV. And it is hereby enacted, that in cases specifically provided for by the Regulations of the Madras code, the Court of Circuit shall sentence the prisoners, on conviction, to suffer the punishment prescribed, if adjudicable by that court; and in cases not so provided for and punishable under the Mahomedan law, shall be competent to pass sentence of punishment to the extent authorised by Clause 7, Section 2, Regulation XV. of 1803.

V. And it is hereby enacted, that in all cases beyond the jurisdiction of the Court of Circuit, under existing Regulations, the trial shall be referred to the Court of Foujdaree Udawlut for their final judgment, and that in cases within the jurisdiction of the Court of Circuit, and specifically provided for by the Regulations, if the stated punishment appear to the judge of circuit too severe, he shall propose a mitigation of punishment according to the rules in force.

(signed) *T. H. Davidson*, Acting Register.

(True copies)

(signed) *H. Chamier*, Chief Secretary.

MINUTE by the Honourable *A. Amos*, Esq., dated the 30th August 1839.

Legis. Cons. 9 Sept. 1839. No. 39.

Dispensing with futwas, Madras Sudder Court.

FOR the reasons stated in the Madras letter, and perhaps others that may be mentioned, it seems to be inexpedient to dispense with the futwa in the circuit courts, especially as the criminal code, when passed into law, will entirely supersede futwas.

I have altered the principle of the Madras draft, which, as I understand it, makes all offences which, before the Act, are punishable under the Mahometan law, and not under the Regulations, to be punishable, after the passing of the Act, under a particular Regulation.

Now, I understand the Law Commissioners, in their 10th paragraph, and am disposed to concur with them, that it is not advisable to make at present material alterations in the Mahometan criminal law, *i. e.* in the substantive law.

In the adjective law, or law of procedure, it was proposed by the Commissioners, and I have so prepared the Act, to dispense with the futwa, on the assumption that those provisions of the Mahometan criminal law which were in force, and not superseded by the Regulations, were not, practically considered, very numerous, and that they had been so frequently brought before and acted upon by the Foujdaree Court, that upon reference to their own reports, or their own knowledge, they would have no difficulty in ascertaining the Mahometan law on any point, without a futwa.

(signed) *A. Amos.*

DRAFT ACT proposed by the President in Council, dated 9th September 1839.

Legis. Cons. 9 Sept. 1839. No. 40.

AN Act for regulating the Procedure on Trials referred to the Court of Foujdaree Udawlut at Madras, in cases determinable by the Mahometan law.

1. Whereas the dispensing with a futwa in cases determinable by the Mahometan law, and referred to the Court of Foujdaree Udawlut at Madras, will be attended with great convenience, whilst that law will be administered by that court in such cases with equal certainty after the futwa shall be dispensed with as heretofore; it is therefore hereby enacted, that in trials referred by the courts of circuit to the said Court of Foujdaree Udawlut at Madras, that court shall not be required to take a futwa from their law officers; provided always, that nothing in this Act contained shall alter or impair the authority of the Mahometan law in any case which before the passing of this Act would have been determinable according to that law by the said court.

(No. 486.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, dated *Fort William*, 9 September 1839.

Legis. Cons. 9 Sept. 1839. No. 41.

Sir,

I AM directed by the Honourable the President in Council to forward to you, for submission to the Right honourable the Governor-general of India, the accompanying copies of papers noted on the margin, together with draft of proposed Act, dispensing with futwas of Mahomedan law officers in criminal cases tried by the Foujdary Adawlut at Madras.

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Paras. 2 to 4, of a Letter from the Government of Fort St. George, dated 3 June 1836.

Para. 16, of a Letter from the Officiating Secretary to the Indian Law Commission, dated 30 May 1837.

Extract from Minute by the Hon. Mr. Robertson, dated 25 January 1839.

Ditto, by the Hon. Mr. Bird, dated 24 May 1839.

Letter to Chief Secretary to the Government of Fort St. George, dated 3 June 1839.

Letter from Chief Secretary to the Government of Fort St. George, dated 12 Aug. 1839, with Enclosure.

Minute by the Hon. Mr. Amos, dated 30 August 1839.

Draft of Act, dated 9 September 1839.

2. It will appear to his Lordship that the measure was first proposed by the government of Fort St. George in paragraph 4 of Mr. Chief Secretary Chamier's letter of 3d June 1836. On that occasion the local government in recommending certain modifications in the judicial system under that government, represented the great inconvenience which was frequently experienced in the administration of criminal justice, from the circumstance of referring to the Mahomedan law officers for their opinions on cases punishable under the Mahomedan law, and noticed the advantages which would result from the abolition of the practice in question. A regulation providing for this measure, as well as certain other matters connected with the judicial system under the Madras government, was submitted by the Governor in Council by the same opportunity.

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3. The papers were referred to the Indian Law Commissioners, who in furnishing their opinion on the several points noticed therein by the local government, though they objected to the Regulation prepared at Madras, agreed in the propriety of dispensing with the necessity of making a reference to a Mahomedan law officer in criminal trials, at least in the Court of Foujdary Adawlut, by an enactment which should not interfere with the substantive criminal law*. The Law Commissioners suggested that the measure might perhaps be advantageously extended to the courts of circuit under the Madras presidency, but they recommended that a reference should be made to the local government before enacting any law regarding the reform in the mode of procedure above alluded to, even as regarded the Foujdary Adawlut.

*See Para. 16, of Letter from Officiating Secretary to Indian Law Commissioners, dated 30 May 1837.

4. This letter (which consists principally of a discussion of a proposal for abolishing immediately the provincial courts at Madras) seems to have been mislaid for a long time. A duplicate of it having been obtained from the Law Commission, it, with the papers to which it related, was again taken into consideration on the 3d of June last, when a communication was made to Madras, as suggested by the Law Commissioners, requesting the opinion of the Right honourable the Governor in Council upon the proposal to dispense with the futwa, and begging that the draft of an Act might be prepared by the Sudder Court at the presidency, for carrying it into effect, if finally approved.

5. The local government have submitted the draft of an Act prepared by the Sudder Court, to the effect proposed by the Law Commissioners, and his Lordship in expressing his entire concurrence in the expediency of such a law, observes, that though the court are not confident of the advantages anticipated from the introduction of the same change of procedure in the courts of circuit, he sees no reason to apprehend any disadvantage from the extension of the practice to those courts.

6. His Lordship will observe that the draft Act which is proposed by the President in Council (prepared by the Honourable Mr. Amos) differs from that prepared by the Madras sudder, by making it more clear that no change is made in the substantive criminal law by this change of procedure. His Honor in Council is inclined to extend the law no further than the Foujdary Adawlut, on the grounds alluded to in Mr. Amos's minute.

7. If the Right honourable the Governor-general of India approve of the proposed enactment, your are requested to procure his Lordship's sanction to its being published for general information, and the assent required by section 70 of the Charter Act, to its being passed without any material alteration.

I have, &c.
(signed) *J. P. Grant,*
Officiating Secretary to Government of India.

Legis. Cons. 21 October 1839. No. 19. Legislative.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William, dated *Simla*, 3 October 1839.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 486, dated the 9th ultimo, with its enclosures, and in reply to convey the sanction of the Right hon. the Governor-general to the publication of general information of the proposed draft of Act, dispensing with futwas of Mahomedan law officers in civil cases tried by the Foujdary Adawlut at Madras.

2. His Lordship's assent in the usual form to pass the Act into law, is enclosed herewith.

I have, &c.
(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India,
with the Governor-general.

Simla, 3 October 1839.

Legis. Cons. 21 October 1839. No. 20. Enclosure. Legislative.

I DO hereby under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed Act for dispensing with futwas of Mahomedan law officers in criminal cases tried by the Foujdary Adawlut at Madras, received from the Honourable the President in Council, in Mr. Officiating Secretary Grant's letter, No. 486, dated the 9th September last.

(signed) *Auckland.*

FORT WILLIAM, Legislative Department, the 21st October 1839.

Legis. Cons. 21 October 1839. No. 21.

THE following draft of a proposed Act was read in Council for the first time, on the 21st October 1839.

Act No. —— of 1839.

An Act for regulating the Procedure on Trials referred to the Court of Foujdaree Udalut at Madras, in cases determinable by the Mahometan law.

1. Whereas the dispensing with a futwa, in cases determinable by the Mahometan law, and referred to the Court of Foujdaree Udalut at Madras, will be attended with great convenience, and the futwa may be dispensed with in that court, without altering or impairing the authority of the Mahometan law; it is therefore hereby enacted, that in trials referred by the courts of circuit to the said Court of Foujdaree Udalut at Madras, that court shall not be required to take a futwa from their law officers; provided always, that nothing in this Act contained shall authorize the said court to dispense with the Mahometan law in any case which, before the passing of this Act, would have been determinable according to that law by the said court.

Ordered that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India, after the 21st day of January 1840.

J. P. Grant,
Officiating Secretary to the Government of India.

(No. 542.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, dated *Fort William*, the 21st October 1839.

Legis. Cons. 21 October 1839. No. 22.

Sir,

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 662, of the 12th of August last, with its enclosure, and in reply to forward to you, for the information of the Right honourable the Governor in Council, the accompanying printed copies of a proposed Act for dispensing with futwas of Mahomedan law officers in civil cases tried by the Foujdary Udawlut at Madras, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette.

Legislative.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

(No. 922.)

From *H. Chamier*, Esq. Chief Secretary to the Government, Fort St. George, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, dated *Fort St. George*, the 22d November 1839.

Legis. Cons. 27 January 1840. No. 1.

Sir,

Para. 1. WITH reference to your letters of the 2d and 21st ultimo, Nos. 551 & 542, I am directed by the Right honourable the Governor in Council to transmit, for submission to the Honourable the President in Council, the accompanying copy of a letter from the Acting Register of the Foujdaree Udawlut, dated the 14th instant, No. 213, suggesting, with reference to the provisions of Act XXIV. of 1839, that the proposed law for regulating the procedure on trials referred to that court may be enacted as soon as possible, and recommending an alteration in the wording of the proposed new law, so as not to restrict its provisions to cases determinable by the Mahomedan law, but to bring also within their scope all cases whatsoever referred to the Foujdaree Udawlut, together with a copy of the previous correspondence with that court, as noted in the margin, from which it will be seen that this government considered separate legislation on account of trials which may be referred by the agents to the Governor of Fort St. George in Ganjam and Vizagapatam,

Judicial Dep.

Letter from the Register of the Foujdaree Udawlut, dated 28 Oct. 1839, No. 203.
Order of Government thereon, dated 9 Nov. 1839, No. 891.

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Vizagapatam, as originally proposed by the Court of Foujdaree Udawlut, to be unnecessary.

2. In conclusion, I am directed to observe that it was not intended to express a dissent from the opinion of his Honor in Council that the question of dispensing with the futwa to be totally distinct from that of superseding the Mahomedan law.

I have, &c.
(signed) *H. Chamier*, Chief Secretary.

(No. 203.)

Legis. Cons. 27 January 1840. No. 2.

From *T. H. Davidson*, Esq. Acting Registrar, to the Chief Secretary to Government.

Enclosure.

Sir,

THE judges of the Foujdaree Udawlut direct me to submit, for the consideration of government, the following observations, which have been suggested by a perusal of the Act of the government of India, No. XXIV. of 1839, passed by the Honourable the President of the Council of India in Council, on the 2d October 1839, and republished in the Fort St. George Gazette, of the 22d instant, No. 875, "for the administration of justice and collection of the revenue in certain parts of the districts of Ganjam and Vizagapatam."

Para. 2. 2. In the letter from this court to government, dated 25th July 1839, No. 139, it is stated to be the opinion of the court that a provision for dispensing with the futwa of the law officers, in cases referred to the Foujdaree Udawlut, would "be necessary in order to give effect to the intentions of the Supreme Government in respect to the judicial administration in certain parts of Ganjam and Vizagapatam, because the provisions of Clause 2, Section 2, Regulation I. of 1818, render a futwa indispensable in cases not specifically provided for by the Regulations.

Para. 3. 3. It was at the same time observed that "under the Act No. XXX. of 1836, the Court of Foujdaree Udawlut considered themselves competent to proceed in the manner prescribed in Clause 1, Section 2, Regulation I. of 1818."

4. And in the letter from this court, dated 26th July 1839, it was stated, with reference to the foregoing remarks, that it appeared to the judges "that the Para. 2. concluding words of section 5 of the draft of the proposed Act were incompatible with the provisions of Section 2, Regulation I. of 1818, which prescribe the manner in which the Foujdaree Udawlut are to proceed on trials referred by a judge on circuit."

5. The said section 5 of the proposed Act was worded as follows: "And it is hereby enacted, that upon the receipt of any criminal trials referred by either of the agents under the rules which may be hereafter prescribed by the Governor in Council, the Foujdaree Udawlut shall, without submitting the proceedings for the futwa of their law officers, proceed to pass a final judgment, or such other order as may, after mature consideration, seem to the court requisite and proper, in the same manner as if the trial had been sent up in ordinary course from a judge on circuit."

6. Section 5 of the Act which has been passed, and is now law, is word for word the same as section 5 of the draft, with the important omission of the passage which in the preceding paragraph has been underlined.

7. The effect of this omission appears to the judges to be that in these trials the Foujdaree Udawlut must take a futwa, and proceed in all respects "as if the trial had been sent up in ordinary course from a judge on circuit."

8. The judges, though they cannot think that this is the intention of the Supreme Government, and are unable to account for this alteration of the provisions in question, have considered it their duty to lose no time in making known their views of the effect of the Act, as passed, to the government, who are empowered by section 4, to prescribe rules "for the guidance" of the agents mentioned in section 3, and to define the authority to be exercised by the agents in criminal trials, and what cases he (they?) shall submit for the decision of the Foujdaree Udawlut.

9. It appears to the judges that either the said agents must send the original proceedings in all referred trials, with translations thereof in English, and from such original proceedings, Persian translations must, the judges conceive, be made here for the use of the law officers of the Foujdaree Udawlut, or if the said agents

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are to hold trials of the highest class of crimes with a Mahomedan law officer, which, with reference to Section 12, Regulation VIII. of 1802, is clearly understood to be the course of proceeding in trials coming before the Foujdaree Udawlut, from the courts of circuit, they will prepare a Persian version for his use, and submit the same to this court, "in the same manner" as a judge of circuit,

10. That neither of these modes of proceeding is intended, is, the judges conceive, clearly inferrible from former correspondence on this subject; but the Act, as passed, appears to them to require the adoption of one or the other, and if that be not intended, its provisions must, in their opinion, be modified, unless provisions should be enacted for discontinuing the requisition of a futwa by the Foujdaree Udawlut in all cases, as lately proposed.

(signed) *T. H. Davidson*,
Acting Register.

Foujdaree Udawlut, Register's Office,
28 October 1839.

(No. 891.)

As a draft of an Act for enabling the Court of Foujdaree Udawlut to dispense with futwahs in all cases disposed of by them has already been read in the Council of India, and may be expected in a short time to become law, the Right honourable the Governor in Council does not consider it necessary to request the government of India to legislate separately for trials which may in the interim be referred to that court, under the provisions of Section 5, Act XXIV. of 1839, by the agents to the Governor of Fort St. George, in Ganjam and Vizagapatam.

Fort St. George, 9 November 1839.

(True copies.)
(signed) *H. Chamier*,
Chief Secretary.

(No. 213.)

Legis. Cons 27 January 1840. No. 3. Enclosure.

From *T. H. Davidson*, Esq., Acting Register, to the Chief Secretary to Government.

Sir,

Para. 1. With reference to the draft republished at page 756 of the Fort St. George Gazette of the 5th inst., of a proposed Act "for regulating the Procedure on Trials referred to the Court of Foujdaree Udawlut at Madras in Cases determinable by the Mahomedan Law," which is ordered to be reconsidered at the first meeting of the Legislative Council of India after the 21st day of January 1840, I am directed by the judges of the Foujdaree Udawlut to observe, that in the interval between the 1st proximo, the date on which the Act No. XXIV. of 1839, will be brought into operation, and the promulgation of the proposed new law, it will be necessary for this court to take futwas in cases referred for their final judgment by the agents of the governor of Fort St. George; and in order thereto, to prepare Persian translations of the proceedings.

2. It will be some time, perhaps, before any such reference is made, but to obviate the inconvenience of such a course, the judges beg leave respectfully to suggest that it be recommended to the Supreme Government to pass the proposed new law as soon as possible.

3. It appears, however, to the Foujdaree Udawlut, that, before the proposed draft is passed into a law, the words "in cases determinable by the Mahomedan law" contained in its title, and the words in the enacting clause "determinable by the Mahomedan law, and" following "futwa," as well as the words "by the court of circuit," should be omitted from it altogether.

4. The object of the proposed Act is to do away with futwas altogether, whether in cases determinable by the regulations or by the Mahomedan law, and it should apply to all trials referable to the Foujdaree Udawlut, whether from the circuit courts, special commissions or courts, agents of the Governor, or others who now are or hereafter may be empowered to refer such trials.

 5. The

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5. The Act, as proposed by the judges, would run as follows:

"An Act for regulating the Procedure on Trials referred to the Court of Foujdaree Udawlut at Madras.

"Whereas the dispensing with a futwa in cases referred to the Court of Foujdaree Udawlut at Madras will be attended with great convenience, and the futwa may be dispensed with in the court without altering or impairing the authority of the Mahomedan law, it is therefore hereby enacted, that in trials referred to the said Court of Foujdaree Udawlut at Madras, that court shall not be required to take a futwa from their law officers; provided always, that nothing in this Act contained shall authorize the said court to dispense with the Mahomedan law in any case which, before the passing of this Act, would have been determinable according to that law by the said court."

(signed) *T. H. Davidson*, Acting Register.

Foujdaree Udawlut, Register's Office,
14 November 1839.

(A true copy.)

(signed) *H. Chamier*, Chief Secretary.

Legis. Cons. 27 January 1840. No. 4. Futwa Act.

MINUTE by the Honourable *A. Amos*, Esq. dated 6 December 1839.

THE Madras government agrees with us that there is no occasion to legislate about futwas, especially with reference to the Vizagapatam Act.

But I should think the Futwa Act had better be altered in the terms proposed by the Madras Court. The principle of the Act was, that the principal court of the presidency could find its way to the law without the intervention of a law officer. I was not aware that at Madras a law officer was employed to instruct the Sudder Court by means of his futwa as to the "law prescribed by the Regulations."

(signed) *A. Amos.*

ACT No. I. of 1840.

Legis. Cons. 27 January 1840. No. 5.

Passed by the Honourable the President of the Council of *India* in Council, on the 27th January 1840.

AN Act for regulating the Procedure on Trials referred to the Court of Foujdaree Udalut at Madras.

1. WHEREAS the dispensing with a futwa in cases referred to the Court of Foujdaree Udalut at Madras will be attended with great convenience, and the futwa may be dispensed with in that court without altering or impairing the authority of the Mahometan law; it is therefore hereby enacted, that in trials referred to the said Court of Foujdaree Udalut at Madras, that court shall not be required to take a futwa from their law officers; provided always, that nothing in this Act contained shall authorize the said court to dispense with the Mahometan law in any case which, before the passing of this Act, would have been determinable according to that law by the said court.

—(A.) No. II.—Part 1.—

No.II.—Part 1. Articles of War.

ARTICLES OF WAR.

(No. 260.)

EXTRACT from the PROCEEDINGS of the Right Honourable the Governor-general of India in Council, in the Military Department under date the 18th of September 1837.

Legis. Cons. 26 Feb. 1838. No. 6.

READ a letter from the assistant adjutant-general of the army, No. 18, under date the 13th of January last, submitting for the consideration of the government, by order of his Excellency the Commander-in-chief, a draft of rules and articles for the better government of the native officers and soldiers in the armies of the East India Company.

Read also the minutes on the subject of these rules and articles recorded by the Governor-general, Colonel Morison, and Mr. Shakespear.

Resolved, with reference to sect. 73. of the 3 & 4 Gul. 4, c. 85, that the revised draft of rules and articles of war for the native armies of the three presidencies, received from his Excellency the Commander-in-chief, be sent to the Legislative Department for consideration and the necessary orders.

Ordered, that a copy of the foregoing resolution, with the letter of the assistant adjutant-general of the army, the draft of rules and articles, and the minutes relating thereto, be sent to the Legislative Department.

Ordered, that the papers in original which accompany the draft of rules and articles be returned from the Legislative to this department, when no longer required in the former.

(True extract.)

(signed) *W. Casement*, M. G.
Secretary to the Government of India, Military Department.

RULES and ARTICLES for the better Government of the Native Officers and Soldiers in the Service of the East India Company.

Legis. Cons. 26 Feb. 1838. No. 7.

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SECTION I.

Of Enlisting and Discharges.

Articles of war and declaration to be read, and oath to be administered to all recruits.

Art. 1. Every recruit, prior to being enrolled in his regiment, shall have the articles of war relating to mutiny and desertion read and explained to him, after which the following declaration shall be made to him by the officer commanding, in front of the corps, in presence of the native officers and soldiers.

Declaration.

Declaration.

"In time of peace, after having served five years, on making application for your discharge, through the commanding officer of your company, it will be granted you within three months from the date of your application, provided it will not cause the vacancies in your company to exceed 10, in which case you

you shall remain until that objection be removed; but in time of war you have no claim to a discharge, but shall remain and do your duty until the necessity of retaining you in the service shall cease."

The following oath shall then be required from him, according to the tenets of his religion, in front of the colours:

Oath

Oath.

"I, *A. B.* inhabitant of village purgunnah subah son of do swear that I will never forsake or abandon my colours* ; that I will march wherever I am directed, whether within or beyond the Company's territories; that I will implicitly obey all the orders of my superior officers, and in everything behave myself as becomes a good soldier and faithful servant of the State."

* The word "guns" to be substituted for colours in swearing in artillery recruits.

Art. 2. And when any recruit is enlisted for corps raised for general service the following words shall be added to the declaration made to him previously to enrolment:

Recruits for general service.

"And you engage to embark on board ship whenever the service shall require your proceeding by sea." [And the following words shall be added to the form of oath for all recruits for those corps]: "And I do further swear that I will readily embark on board ship whenever the service shall require me to proceed by sea."

Art. 3. No commissioned officer shall be dismissed excepting by an order from the government, or from the Commander-in-chief, or by the sentence of a general court martial. Non-commissioned officers and soldiers may be discharged the service by order of the officer commanding-in-chief at the presidency to which such non-commissioned officer or soldier may belong, or by sentence of a court martial, and every such discharge shall include forfeiture of all claim to pension; provided that no sentence of discharge awarded by a court martial inferior to general shall be carried into effect, without the concurrence of the general or other officer commanding the division, district, or field force with which the prisoner may be serving.

Commissioned officers, non-commissioned officers, and soldiers, by what authority to be dismissed the service.

Art. 4. All non-commissioned officers and soldiers discharged the service shall be furnished by the commanding officer of the corps with a discharge certificate, made out in the vernacular language of the individual discharged, with an English translation, expressing the authority for or cause of such discharge, and the period of their service in the corps to which they may at the time belong.

Non-commissioned officers and soldiers to be furnished with a discharge certificate.

Art. 5. No non-commissioned officer or soldier shall enlist himself in any other regiment without a regular discharge from his former corps, under the penalty of being reputed a deserter, and suffering accordingly.

Penalty of enlisting in other regiments, &c. without a discharge from former regiment.

Section II.

Crimes and Punishments.—Crimes punishable with Death, Transportation, &c.

Art. 6. Any officer, non-commissioned officer, or soldier, who shall begin, excite, cause, or join in any mutiny or sedition in the regiment or corps to which he belongs, or in any other corps in the service, or serving as allies, on any pretence whatsoever, or who being present at any mutiny or sedition shall not use his utmost endeavours to suppress it, or who coming to the knowledge of any mutiny, intended mutiny, or concealed combination against the State, who shall not without delay give information thereof to his commanding officer; or,

Penalty of mutiny.

Art. 7. Who shall strike his superior officer, or shall draw, or offer to draw, or lift up any weapon, or use, or offer any violence against him, on any pretence whatever, or shall disobey any lawful command of his superior officer.

Penalty of striking, or drawing any weapon against a superior officer, &c.

Art. 8. Who shall be convicted of desertion.

Penalty of desertion

Art. 9. Who in time of war or alarm shall be found sleeping upon his post, or shall leave it before regularly relieved.

Penalty if a sentry be found sleeping on his post, or of quitting it before he is relieved, in time of war or alarm.

Art. 10. Who, in time of war or alarm, shall do violence to any person bringing provisions or other necessaries to the cantonment or camp of the troops employed, or shall force a safeguard; or,

Penalty of doing violence to any person who brings provisions to the camp or quarters, in time of war or alarm.

Penalty of making known the watchword.

Art. 11. Who shall treacherously make known the watchword to any person not entitled to receive it according to the rules and discipline of war; or,

Penalty of making false alarms in camp or quarters.

Art. 12. Who in time of war, shall by discharging of fire-arms, drawing of swords, beating drums, making signals, using words, or by any means whatsoever intentionally occasion false alarms in action, camp, garrison, or quarters; or,

Penalty of holding correspondence with, or giving intelligence to the enemy.

Art. 13. Who shall be convicted of holding correspondence with, or giving intelligence to the enemy, or any person in rebellion, either directly or indirectly, or coming to the knowledge of such correspondence, shall not discover it immediately to his commanding officer; or,

Penalty of relieving or harbouring an enemy.

Art. 14. Who shall, directly or indirectly, assist or relieve the enemy or person in rebellion, with money, victuals, or ammunition, or shall knowingly harbour or protect an enemy or rebel; or,

Penalty of going in search of plunder.

Art. 15. Who shall leave his commanding officer, or his post, or company, in time of action, or go in search of plunder; or,

Penalty of casting away arms or ammunition.

Art. 16. Who shall in presence of an enemy cast away his arms or ammunition; or,

Penalty of misbehaving before the enemy.

Art. 17. Who shall misbehave himself before the enemy, or use means to induce others so to misbehave; or,

Penalty of shamefully abandoning, &c. to the enemy any garrison, fortress, &c.

Art. 18. Who shall shamefully abandon or deliver up to the enemy any garrison, fortress, post, or guard committed to his charge, or which it was his duty to defend, or who shall use means to induce any other officer, non-commissioned officer, or soldier, so to abandon or deliver up any such garrison, fortress, post, or guard; or,

Penalty of treacherously suffering an enemy to escape.

Art. 19. Who shall treacherously release wilfully, or connive at the escape of any enemy or rebel placed as a prisoner under his charge, shall suffer death, or transportation, or imprisonment, with or without hard labour, for life, or for a term of years, as a general court martial shall award.

Penalty of selling stores, &c. the property of Government.

Transportation, hard labour, or imprisonment may be awarded.

Art. 20. Any officer, non-commissioned officer, or soldier, who shall embezzle or fraudulently misapply any money entrusted to him on the public account, or for any military purpose, or any provisions, forage, arms, clothing, ammunition, or military stores of whatever kind or description, the property of government, entrusted to his charge, or who shall be concerned in or connive at any such embezzlement or fraudulent misapplication, shall, on conviction thereof before a general court martial, be dismissed the service and fined to the extent of the loss or damage; and be further liable to be transported for life, or for a term of years, or to suffer imprisonment, with or without hard labour, not exceeding four years.

Crimes not punishable with Death or Transportation.

Penalty of persuading any one to desert.

Art. 21. Any officer, non-commissioned officer, or soldier, who shall be convicted of having advised or persuaded any other officer, non-commissioned officer, or soldier, to desert, or having connived at such desertion; or,

Penalty of not joining from leave without delay when corps is ordered on service.

Art. 22. Who being on leave of absence, shall have received information from the head quarters of his regiment, or from other competent authority, that his corps has been ordered on service, and shall not rejoin without delay; or,

Penalty of taking a bribe for procuring leave, &c.

Art. 23. Who, directly or indirectly, shall require or accept a bribe, present, or gratification, on the pretence of procuring leave of absence, promotion, or any other advantage or indulgence for any officer, non-commissioned officer, or soldier; or,

Penalty of occasioning false alarms in time of peace.

Art. 24. Who in time of peace, shall by discharging fire-arms, drawing swords, beating drums, or by any other means whatever occasion false alarms in camp, garrison, or quarters; or,

Penalty of being two miles from camp without leave.

Art. 25. Who shall be found two miles from the camp without leave; or,

Penalty of not repairing at the time fixed to the parade, &c.

Art. 26. Who shall fail to repair at the time fixed to the parade or place appointed, if not prevented by sickness or some other sufficient cause; or,

Penalty of quitting company or troop without leave.

Art. 27. Who shall without urgent necessity, or without leave of his superior officer, quit his company or troop; or,

Art. 28.

Art. 28. Who shall quit his guard or post, without being regularly dismissed or relieved; or, — Penalty of quitting guard or post without being relieved, &c.

Art. 29. Who, being in command of a guard, shall refuse to receive any prisoner duly committed to his charge, or shall without proper authority release any prisoner, or shall suffer through carelessness or neglect any prisoner to escape; or, — Penalty of releasing a prisoner without orders, or suffering him to escape

Art. 30. Who, being in command at any post, or on the march, on complaint made to him of any person under his command beating or otherwise ill-treating any person, or extorting from him more than he is obliged to furnish by authority, or disturbing fairs, or market, or committing any kind of riot, shall not see reparation done to the party or parties injured, or if that be impracticable, shall not report the same to his superior officer, shall be punished according to the sentence of a general or other court martial. — Penalty of not seeing reparation done to persons ill-treated, &c.

Art. 31. Any officer, non-commissioned officer, or soldier, who shall knowingly enlist a deserter, or shall not after his being discovered, immediately cause him to be confined, and give notice thereof to the nearest commissioned officer; or, — Penalty of entertaining a deserter.

Art. 32. Who shall be found drunk on duty; or, — Penalty of drunkenness on duty.

Art. 33. Who shall strike or do violence to a sentry; or, — Penalty of striking or doing violence to a sentry.

Art. 34. Who shall knowingly make a false return or report to any of his superior officers authorised to call for such return or report, of the state of the men under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, or of which he may otherwise have charge; or, — Penalty of false returns of reports.

Art. 35. Who shall be convicted of obtaining or attempting to obtain for himself, any officer, or soldier, or for any other person whatsoever, any pension or allowance, by any false statement, certificate, or document, or by the omission of the true statement; or, — Penalty of false certificates, &c, to obtain pension, &c.

Art. 36. Any officer who shall behave in a disgraceful manner, unbecoming the character of an officer, the fact or facts whereon the charge is grounded being clearly specified, shall, if an officer, on conviction thereof before a general court martial, be dismissed the service; and if a non-commissioned officer or soldier, shall, on conviction thereof, be punished according to the sentence of a court martial. — Penalty of disgraceful conduct of commissioned officers.

Art. 37. Whatsoever officer under arrest shall leave his confinement before he is set at liberty by competent authority, shall be dismissed the service, or be otherwise punished according to the judgment of a general court martial. — Penalty of breach of arrest.

Art. 38. Any person using menacing words, signs, or gestures, in the presence of a court martial, or causing any disorder so as to disturb their proceedings, or in any way being guilty of contempt of court, shall, if amenable to the Articles of War, be punished according to the nature and degree of his offence by the judgment of another court martial; if not amenable to such articles, the offender shall be transmitted to the civil magistrate, who shall proceed against him as if the offence had occurred in his own court. — Penalty of using menacing words, gestures, &c. before a court martial

Art. 39. Any officer, non-commissioned officer, or soldier, who shall be absent from his cantonments after tattoo, or from camp after retreat beating, without leave from his superior officer, shall be liable to punishment according to the circumstances and degree of his offence. — Penalty of remaining night out of camp or quarters.

Art. 40. Whatsoever non-commissioned officer or soldier shall be convicted of stealing money or goods the property of a comrade or of a military officer, or of committing any petty offence of a fraudulent nature, to the injury of or without intent to injure any person, civil or military, shall suffer such punishment as may by a court martial be awarded, and the property so fraudulently obtained shall be restored to the owner. — Penalty of stealing from a comrade, &c.

Crimes punishable with Fine, Stoppages, or Forfeiture of Pay, in addition to other Punishments.

Art. 41. Any officer, non-commissioned officer, or soldier, who shall without orders commit waste or plunder, either in towns or villages, gardens or fields, or shall injure or destroy the property, or shall do violence on the person of any of the — Penalty of committing any waste or spoil in towns, villages, gardens, &c.

the inhabitants, shall make compensation for the injury committed, and be also punished according to the sentence of a court martial.

Penalty of extorting money, &c. as fees, duties, or on any pretence whatsoever.

Art. 42. Any commissioned officer commanding at any post, or on the march, who shall on any pretence whatever, illegally and against the will of the parties, extort money or other property or services, shall make compensation, and be otherwise punished according to the sentence of a general court martial.

Penalty of a non-commissioned officer or soldier extorting money, &c. as fees, on any pretence whatsoever.

Art. 43. Any non-commissioned officer or soldier, at any post, or on the march, who shall extort money or property of any description as fees or duties, or on any pretence whatever, or shall without authority exact from villagers or others, carriage, porterage, or provisions; or,

Penalty of selling or wasting ammunition delivered out.

Art. 44. Who shall sell, lose, or designedly or through neglect waste the ammunition delivered out to him; or,

Penalty of spoiling, &c. horse, arms, &c.

Art. 45. Who shall sell, lose, or designedly or through neglect lose or injure his horse, or spoil his arms, clothes, accoutrements, or regimental necessaries, shall be liable to such punishment as a court martial shall award, and shall make good the loss or damage sustained, by monthly stoppages, not exceeding half his pay and allowances.

Penalty of not disbursing pay, or making deductions, &c.

Art. 46. Any officer, non-commissioned officer, or soldier, or any other person attached to the army, entrusted with public money for the payment of troops or departments, who shall after receiving orders to disburse the same, make any deduction, or not pay the same according to the prescribed regulations upon the head, shall be fined five times the amount so withheld, to be applied as the Government shall direct, and be further liable to suffer such punishment as by the sentence of a court martial may be awarded.

Penalty of not attending when summoned as a witness before a court martial, or of refusing to be sworn; or giving evidence, shall prevaricate.

Art. 47. Any officer, non-commissioned officer, or soldier, or any person amenable to the articles of war, who, when duly summoned before a court martial, shall not attend, or shall refuse to be sworn, or shall prevaricate in giving evidence, shall be subjected to fine or imprisonment, or such other punishment as a court martial shall award.

Penalty of perjury.

Art. 48. Whatsoever commissioned officer shall be found guilty by a general court martial of perjury, by wilfully and knowingly giving false evidence on oath or solemn declaration on any trial before any other general or inferior court martial, or any military court entitled to administer an oath, shall be dismissed the service, and be further subject to fine to the amount of his arrears of pay and allowances, or imprisonment at the discretion of the court; and every non-commissioned officer or soldier so convicted shall be dismissed the service, and liable to suffer such other punishment as a court martial may award.

Penalty of being absent without leave, and of overstaying the period of leave.

Art. 49. Any officer, non-commissioned officer, or soldier who shall absent himself without leave, or shall without sufficient cause overstay the period for which leave may have been granted him, shall forfeit his pay and allowances for the time he may have been so irregularly absent, and be further liable to be punished by the sentence of a court martial.

Penalty of malingering, &c.

Art. 50. Whatsoever commissioned officer or soldier shall be convicted of feigning, or producing disease or infirmity, shall, if a commissioned officer, be dismissed the service, and if a non-commissioned officer or soldier, shall forfeit all claim to pension on discharge, in addition to such other punishment as may by a court martial be awarded.

Crimes not capital but prejudicial to good order and discipline, cognizable and punishable by courts martial.

Art. 51. All crimes not capital, and all disorders or neglects which officers, non-commissioned officers, and soldiers may be guilty of, to the prejudice of good order and military discipline, though not specified in these rules and articles, are to be taken cognizance of by courts martial, and to be punished according to the nature and degree of the offence.

Section III.

Administration of Justice.

Commander-in-chief to appoint courts martial.

Art. 52. The Commander-in-chief, or commanding officer of the forces for the time being at the presidency to which the prisoner to be tried may belong, is empowered to convene courts martial, and to confirm the sentences passed by such courts,

courts, and to mitigate or remit the punishments awarded, according to his discretion.

Art. 53. The Commander-in-chief, or commanding officer of the forces for the time being, at the presidency to which the prisoner to be tried may belong, may delegate the power of convening general courts martial to any officer commanding a body of troops, and empower such officer to confirm the sentences passed by such courts, or to mitigate or remit the punishment awarded; provided, that when troops of different presidencies are serving together, such delegation shall be made by the Commander-in-chief in India.

Commander-in-chief may delegate the power of convening courts martial.

Art. 54*. A general court martial shall not consist of less than 13 commissioned officers, unless it be held out of the Honourable Company's territories, where a general court martial shall not consist of less than seven.

A general court martial not to consist of less than thirteen commissioned officers.

Art. 55. All the members of a court martial are to preserve order, and in giving their votes are to begin with the youngest; and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of votes, but in case of an equality of votes the decision shall be in favour of the prisoner.

Members voting to begin with the youngest, &c.

Equality of votes.

Art. 56. No sentence of death shall be given against any offender by a court martial, unless two-thirds of the members concur therein.

Concurrence of two-thirds of the members in a sentence of death.

Art. 57. No sentence of a general court martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-chief at the presidency to which the prisoner may belong, or such other person as shall have been duly authorised to confirm the same, and until his directions shall have been signified thereon.

No sentence to be put in execution until confirmed.

Art. 58*. In cases wherein sentence of death has been awarded by a court martial, the Commander-in-chief, or the officer commanding the forces for the time being at the presidency to which the prisoner may belong, may, instead of causing such sentence to be carried into effect, order the offender to be transported for life, for a certain term of years, or to be imprisoned, with or without hard labour, for life, or a certain term of years, as to the said officer commanding-in-chief may seem meet.

Sentence of death may be commuted to transportation, &c. &c.

Art. 59*. General court martial may award imprisonment, with or without hard labour, in any public prison or other place which the Commander-in-chief at the presidency to which the prisoner may belong shall appoint, on any non-commissioned officer or soldier for misbehaviour or neglect of duty, according to the nature and degree of the offence; and may, in addition to any such punishment, adjudge a forfeiture of all claim to pension on discharge, which might otherwise have accrued to such non-commissioned officer or soldier from the length or nature of his service; provided, that no soldier who has undergone the punishment of imprisonment with hard labour, under the sentence of any court martial, shall be capable of being re-admitted into the ranks, or receiving pension on discharge.

General court martial may award imprisonment, &c. for misbehaviour or neglect of duty.

Art. 60. Trials by court martial may be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

Hours of sitting.

Art. 61. At all courts martial the senior officer shall sit as president, without being so appointed by warrant.

Senior officer to preside.

Art. 62. At all regimental or other inferior courts martial an European officer of not less than five years' standing in the service, except in cases where no officer of that standing may be available, shall be appointed to conduct the proceedings, and on the formation of the court shall take and administer the several oaths prescribed in Article 63 of these rules and articles; in case of the unavoidable absence of an interpreter, the superintending officer shall also take the oath prescribed the interpreter in the said article.

At all inferior courts martial an European officer to superintend.

Art. 63. An interpreter, if practicable, shall be appointed to all native courts martial, and on the assembly of the court the judge-advocate or superintending officer shall administer to him the following oath:—

An interpreter to be appointed to all native courts martial.

Oath.

"I, *A. B.*, swear that I will faithfully interpret and translate the proceedings of the court, and that I will not divulge the sentence until it shall have been

Oath to be taken by the interpreter.

been approved or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or court martial in due course of law.

"So help me God."

The judge-advocate or superintending officer shall then cause the following declaration to be made by each member, on oath, according to the tenets of his religion:—

"I, *A. B.*, do swear that I will duly administer justice according to the articles of war, without partiality, favour, or affection; and if any doubt shall arise, then according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of the court until it shall be approved of or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court martial in due course of law."

The following oath shall then be administered by the interpreter to the judge-advocate or superintending officer:—

Oath to be taken by the judge-advocate or superintending officer.

"I, *A. B.*, do swear that I will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof by a court of justice or a court martial in due course of law.

"So help me God."

Provided, that it shall not be necessary to re-administer these oaths on the commencement of fresh trials before the same court.

Witnesses to be examined on oath or solemn declaration.

Art. 64. All persons who give evidence at a court martial are to be examined on oath or solemn declaration, according to the tenets of their religion.

Persons not amenable to military authority, how summoned.

Art. 65. In all cases where persons required as witnesses before a court martial may not be amenable to military authority, the judge-advocate or commanding officer shall transmit to the magistrate within whose jurisdiction the witness may reside his summons for the attendance of such person, and the magistrate shall enforce obedience to such summons.

How punished for not attending, or for perjury.

Art. 66. Any person having been so summoned refusing or neglecting to attend, or who attending shall commit wilful and corrupt perjury, shall suffer such penalties as may be in force against a person so offending in any court of civil judicature.

Persons not amenable to the articles to be forwarded, with a written statement, to magistrate of district.

Art. 67. Whosoever, not being amenable to the articles of war, shall refuse to be examined on oath, and the court shall be of opinion that there is no sufficient reason for such refusal, such person shall be forwarded, with a written statement by the judge-advocate or superintending officer, to the civil magistrate of the district, who shall certify the propriety of exempting such witnesses from the oath, or if otherwise, shall proceed in the same manner against him as if such refusal had occurred in the civil court.

Hindoos exempted from taking an oath to subscribe a declaration.

Art. 68. In the case of a witness of the Hindoo persuasion being exempted from taking an oath, the following declaration shall be subscribed by him previously to his deposition:—

Declaration.

"I will faithfully answer according to the truth such questions as may be put to me by the court in the cause now before the court; I will not declare anything not warranted by the truth; if I declare anything not warranted by the truth I shall be deserving of punishment from Ishwar."

Mussulmans exempted from taking an oath to subscribe a declaration.

Declaration.

And in the case of a Mussulman witness so exempted, the following declaration shall be subscribed by him previously to his deposition:—

"I sincerely promise and solemnly declare, in the presence of Almighty God, that I will faithfully and without partiality answer according to the truth any questions that may be put to me by the court respecting the cause now before the court."

After the witness, whether Hindoo or Musulman, has given his deposition, he is to subscribe the following declaration:—

Declaration.

"I solemnly declare in the presence of Almighty God, that I have faithfully,

fully, and without partiality, answered according to the truth the questions put to me by the court respecting the cause now before the court."

Officers, non-commissioned officers, and soldiers, may be placed in arrest or confined.

Art. 69*. Whenever any officer, non-commissioned officer, or soldier, shall commit a crime deserving punishment, he shall by his commanding officer be put in arrest, if an officer, or if a soldier be confined, until he shall be either tried by a court martial, or shall be lawfully discharged by a proper authority; and no officer, or soldier, who shall be put in arrest or confinement, shall continue in his confinement for more than eight days, or until such time as a court martial can be conveniently assembled.

Commissioned officers amenable to general courts martial only.

Art. 70*. No commissioned officers shall be tried by any but a general court martial.

Commissioned officers to be adjudged to suspension or to loss of rank.

Art. 71*. When a commissioned officer shall be convicted before a general court martial of any offence for which he may be sentenced at the discretion of the court, such officer may be adjudged to be suspended from rank, and pay, and allowances for a stated period, or to be placed lower on the list of his rank by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service, and the court shall in every such sentence specify the extent or degree of suspension or reduction which they shall so adjudge.

Commanding officer to assemble inferior courts martial.

Sentence to be confirmed by the commanding officer previous to execution.

Art. 72*. The commanding officer of every station, cantonment, garrison, detachment, or regiment, may assemble courts martial, according to the nature of his command, composed of native commissioned officers, for inquiring into such disputes or criminal matters as may come before them, and for inflicting punishments for small offences; but no sentence shall be carried into effect until the commanding officer shall have confirmed it.

No officer commanding less than four companies to confirm the sentence of a court martial.

Art. 73. No officer in detached command of less than four companies shall carry into execution any punishment awarded by a court martial held by his order, until the sentence shall have been confirmed by the officer commanding the regiment to which the offender belongs, except when an immediate example is necessary.

Inferior courts martial not to consist of less than five officers.

Art. 74*. No regimental or other inferior court martial shall consist of less than five officers, excepting where that number cannot conveniently be assembled, when three shall be sufficient, of whom the senior officer shall be president.

Non-commissioned officers punished with loss of rank, &c. &c.

Art 75. A non-commissioned officer may, by the sentence of a court martial, be reduced to serve as a private soldier, or a havildar may be reduced to the rank of naick, or a non-commissioned officer or soldier may be placed lower in the list of the rank which he holds, with proportionate loss in respect to length of service, such loss to be distinctly specified in the sentence, and to be restorable by the Commander-in-chief.

Imprisonment awardable by inferior court martial.

Art. 76*. A regimental orother inferior court martial may award imprisonment for any period not exceeding four months, and imprisonment with hard labour for any period not exceeding two months.

Stoppages, not exceeding half-pay and allowances, may be awarded by sentence of a court martial.

Art. 77*. It shall be competent to any court martial to sentence any non-commissioned officer or soldier to be put under stoppages, not exceeding half his pay and allowances, until any loss or damage occasioned by his negligence or misconduct be made good, such stoppages to be sentenced in addition to any punishment which the court may be competent to award.

Corporal punishment to be awarded to camp followers only.

Art. 78*. It shall not be competent to any court martial to sentence a non-commissioned officer or soldier to be flogged, but camp followers not above the condition of menial servants or labourers, shall be liable to corporal punishment not exceeding 100 lashes with a cat-of-nine-tails.

Commanding officer may award drill or extra duty.

Art. 79*. In cases of light offences a commanding officer may, without the intervention of a court martial, award drill or extra duty, not exceeding 15 days; and neither of these descriptions of punishment shall be awardable by sentence of a court martial.

Non-commissioned officers, how to be reduced.

Art. 80*. No non-commissioned officer shall be reduced to the ranks but by the sentence of a court martial, or the special order of the Commander-in-chief.

An officer, non-commissioned officer, or soldier, considering

Art. 81*. If any officer, non-commissioned officer, or soldier, shall think himself wronged by his superior or other officer, he is to complain thereof to the com-

himself wronged by his superior, may complain to his commanding officer.

manding officer of his troop or company, by whom, if the grievance be not redressed, such officer, non-commissioned officer, or soldier, may complain to the commanding officer of his regiment, who is hereby required to examine into such complaint or remit it to superior authority, as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished by the sentence of a court martial, according to the circumstances of the case.

No person to be tried second time for same offence.

Art. 82*. No person being acquitted or convicted before a court martial of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence.

Limitation of liability to trial.

Art. 83*. No person shall be liable to be tried or punished for any offence against these rules and articles, which shall appear to have been committed more than three years previous to the order directing the assembly of the court martial whereby he is to be tried, unless the person accused, by reason of his absenting himself, or some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall cease.

Courts of request.

Art. 84*. Actions of debt, and personal actions against commissioned officers, non-commissioned officers, soldiers, or other persons subject to these rules and articles, shall be cognizable before a court of requests, composed of military officers, and not elsewhere, provided that, within the Company's provinces, the value shall not exceed 200 rupees, which court the commanding officer of any station or cantonment is hereby authorised and empowered to convene; and the said court shall, in all practicable cases, consist of five commissioned officers, and in no instance of less than three, and the president thereof shall not be under the rank of subadar as superintending officer, of not less than five years' standing; and an interpreter to be attached to the court.

Every witness before any such court shall be examined on oath or solemn declaration, the interpreter and superintending officer shall be duly sworn, as is prescribed in Article 63, and the president and members shall take the following oath:—

"I, *A. B.*, swear that I will duly administer justice, according to the evidence in the matter that shall be brought before me."

And it shall be competent for such courts, upon finding any debt or damage due, either to award execution thereof generally, or to direct that the whole or any part thereof shall be stopped, and paid over to the creditors, out of any pay or public money which may be coming to the debtor, after due provision for his necessary subsistence and equipment in the current or any future month; and in case execution shall be awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the court; and the goods of the debtor, if found within the limits of the garrison or cantonment to which the debtor shall belong, at any subsequent time, shall be liable to be seized and sold, in satisfaction of any remainder of such debt or damage; and if sufficient goods shall not be found within the limits of the camp, garrison, or cantonment, then any public money, or any sum not exceeding the half-pay accruing to the debtor, shall be stopped in liquidation of such debt or damage; and if such debtor shall not receive pay as an officer, or soldier, or from any public department, he shall be arrested, by like order of the commanding officer, and imprisoned in some convenient place for the space of two months, unless the debt be sooner paid.

Beyond the Company's territories the claim may be limited, but if it exceed 1,000 rupees, the court shall be composed of European officers, but shall not be competent to award imprisonment, in case of non-satisfaction of claim, exceeding six months, or in case of non-satisfaction, combined with fraudulent and dishonest conduct, two years.

Section IV.

Effects of the Dead.

Effects of deceased commissioned officers, non-commissioned officers, soldiers, and public servants.

Art. 85. When any commissioned officer, non-commissioned officer, or soldier, or any person receiving public pay, drawn by an officer in charge of a public department belonging to the army, may die, or be killed in the service, the commanding

manding officer of the regiment or party, or officer in charge of the department, shall secure his effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the adjutant or officer in charge of the department.

Rules to be observed in the disposal of the effects of the deceased, if no executor be on the spot.

Art. 86. If there be no executor on the spot appointed by the deceased, the effects are to be publicly sold, the commanding officer of the regiment or party, or officer in charge of the department, after discharging the debts of the deceased, viz. the expense of funeral ceremonies, his debts in camp or quarters, and regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or in failure of such, to the legal representative of the deceased; and in the event of no executor, heir, or other representative of the deceased attending and establishing his claim within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate is to be remitted to the general treasury at the presidency.

Section V.

Relating to the foregoing Articles.

All persons serving with any part of the army, &c. are to be governed by these articles, and be amenable to trial by courts martial.

Art. 87. All persons serving with any part of the army and receiving public pay drawn by any officer in charge of a public department appertaining to the army; and all suttlers, camp followers, and other persons attached to the army or gaining or seeking a livelihood in a military bazar or cantonment, shall be subject to these rules and articles, and amenable to trial by court martial, according to the rules and discipline of war; provided that no person above the condition of menial servant or labourer shall be liable to be sentenced to corporal punishment.

When troops serving where there is no court of civil judicature, serious offences may be tried by general court martial.

Art. 88*. Whenever any body of the troops shall be employed where there is no court of civil judicature, any officer, soldier, or other person amenable to military law, accused of murder, robbery, or other serious offences against person or property, shall be tried by a general court martial, and punished with death, or otherwise, according to law.

General courts martial may be assembled for the trial of any person accused of any crime committed against the property, &c. of an inhabitant of any place out of the British territories, where the troops shall be in military possession, &c.

Art. 89*. In any place out of the British territories, or of states in alliance with the British Government, where the troops shall be in military possession, the officer commanding any division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers at the least, for the trial of any person under his command accused of any crime committed against the property or person of any inhabitant or resident at such place, or of having committed violence or any other offence; and every such court martial shall have power to adjudge any person so accused to suffer the punishment herein prescribed for the crime or offence charged, but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party shall belong.

General courts martial may be assembled for the trial of persons owing allegiance to the British Government, who may be taken in arms against the said Government, &c.

Art. 90. And in all places within the Company's territories where martial law shall have been by due authority proclaimed, the officer commanding the division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers at the least, for the trial of any person owing allegiance to the British Government, who may be taken in arms against the said Government, or maliciously attacking or injuring the persons or properties of any loyal subject, or in any other manner assisting in rebellion; and it shall be lawful for any such court martial to adjudge any person so found guilty to suffer death, by being hanged by the neck until dead, or to be otherwise punished as to such court martial shall seem expedient; but no sentence shall be executed until confirmed by the said commanding officer.

And the commanding officer of every such division, detachment, or distinct party is hereby authorised to arrest and detain in custody all persons engaged in such rebellion or suspected thereof, and to cause all persons so arrested and detained to be brought to trial, and to execute the sentence of all such courts martial, whether of death or otherwise, and to do all other acts necessary for such several purposes.

Persons aiding, &c. the enemy, amenable to court martial, and liable to suffer death.

Art. 91*. Every court martial, as constituted in the preceding article, shall have power to try any person owing allegiance to the government, who shall be taken in

No. II.—Part 1.
Articles of War.

in arms against the State, or otherwise aiding and abetting the enemy; and such persons so found guilty shall be liable to the punishment of death, by being hanged by the neck until dead, or to transportation: but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party shall belong.

Sentence not to be executed until confirmed by the officer commmanding.

Art. 92. No person amenable to these rules and articles shall be adjudged to suffer death or transportation except for such crimes as are herein expressly declared so punishable; neither shall any such sentence of death or transportation in any case be awarded by any court martial other than a general court martial.

Punishment extending to life or transportation to be restricted to crimes expressly so declared in these Rules and Articles.

Art. 93. Whenever the sentence of a general court martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, the Nizamut Adawlut shall give effect to such sentence or commuted sentence, on the sentence being certified to the court by the adjutant-general, or his deputy, under the authority of the Commander-in-chief.

Nizamut Adawlut to give effect to sentences of transportation.

Art. 94. Whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, it shall be the duty of any magistrate to give force to such sentences on the offender sentenced to imprisonment being delivered to his custody, and on being furnished with a copy of the sentence by the general or other officer commanding the division or district within which the trial is held.

Magistrate to give effect to sentences of imprisonment by military authority.

Art. 95*. In every case wherein a fine or pecuniary compensation shall be adjudged by a court martial, any arrears of pay or public money due to the offender, or any property belonging to him in camp, garrison, or cantonment, shall be available, under an order from the officer commanding, for the payment of the amount so adjudged.

When a fine is adjudged by a court martial, the pay or property, &c. of the offender within camp, &c. shall be available.

Art. 96*. Any commissioned officer, non-commissioned officer, or soldier under arrest or in confinement, under a charge of any offence, shall not be entitled to receive his full pay and allowances from the day of his commitment till the day of his return to duty in his regiment, or to the party he shall be ordered to join, but shall be subsisted at a rate proportioned to his rank; and if he be acquitted, he shall receive the balance of all arrears of pay and allowances accruing during the time of his confinement.

Commissioned, non-commissioned officer or soldier confined on a criminal charge, not entitled to full pay, &c. during his absence from his regiment, &c.

Art. 97*. Any officer, non-commissioned officer, or soldier who shall be taken prisoner by the enemy, shall forfeit all claim to pay and allowances during the period of his remaining a prisoner, and until he shall again return to the service; when, if he can establish before a court martial that he was unavoidably taken prisoner in the course of service, and that he hath not served with or assisted the enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole or such portion of his arrears of pay and allowances as the court martial shall award.

Any officer, non-commissioned officer or soldier made prisoner, to forfeit all claim to pay and allowances.

Art. 98*. The effects of deserters are to be publicly sold, and the proceeds, after payment of regimental debts, remitted, by the officer commanding the corps to which the deserter belongs, to the general treasury at the presidency.

Effects of deserters.

Art. 99. Persons professing the Christian religion, wherever born, or of whatever parentage, shall not be amenable to these rules and articles, but shall be subject to the Mutiny Acts and Articles of War in force from time to time for His Majesty's forces, or for the Honourable Company's troops, according to the nature of their services.

Christians not amenable to these Rules and Articles.

Art. 100. These rules and articles are to be translated into the several languages of the different presidencies, and the first, second, and fourth sections, together with the following articles, which are marked with asterisks, viz. 54. 58, 59. 69, 70, 71, 72, 74. 76, 77, 78, 79, 80, 81, 82, 83, 84. 88, 89. 91. 95, 96, 97, 98, are to be read once in six months at the head of every regiment, troop, or company mustered in the service.

The Rules and Articles to be published.

(No. 343.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *J. P. Grant*, Esq. Officiating Secretary to the Law Commission.

Legis. Cons. 26 February 1838. No. 3.

Sir,

I AM directed by the Right honourable the Governor-general in Council to forward to you, for the purpose of being submitted to the Law Commission, the accompanying extract from the Military Department, and the rules which accompanied it, for the better government of the native officers and soldiers in the armies of the East India Company.

Legislative.
Extract Military Department, 18 Sept. 1837, No. 260.
Minute by the Governor-general, 27 January 1837.
Minute by Colonel Monson, 4 April 1837.
Minute by Mr. Shakespear, 19 June 1837.
Letter from the Assistant Adjutant-general to Secretary to Government, Military Department, 13 Jan. 1837, No. 18, Rules and Articles.

2. The object, I am desired to state, in sending these papers is to ascertain whether the proposed rules contain anything, in the opinion of the Commission, (and chiefly as regards their penal provisions,) which is at variance with the general principles of jurisprudence, so far as the Commission may be able to judge, without reference of course to military considerations.

3. It will be proper, however, that the Law Commission should take into consideration any of the views expressed in the minutes of the Governor-general in Council as relating to penal questions or points of law, as these views may appear to differ from the draft of the law, and whether there appear to be any objections to the plan therein adopted of numbering the different sections, without distinguishing, as usual, the military regulations from the penal enactments or articles of war.

4. You are requested to return the original papers herewith sent, with your reply.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

Council Chamber,
25 September 1837.

(No. 90.)

From *J. P. Grant*, Esq. Officiating Secretary, Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Legis. Cons. 26 February 1838. No. 9.

Sir,

I AM directed by the Law Commisioners to convey to you the observations which they have to offer on the proposed articles of war for the native forces of the East India Company, which were referred to them by Mr. Secretary Macnaghten's letter of the 25th of September last.

2. I am desired first to submit those remarks of the Commissioners which are of a general nature, and then those which relate to particular provisions in the proposed new body of military law.

3. The Commissioners observe, that in applying the general principles of jurisprudence to the making of laws for the government of armies, the peculiar objects of military discipline cannot safely be for a moment left out of consideration. The penal provisions of the proposed articles of war, must be considered with reference to those peculiar objects, to the peculiar duties which, for the sake of those objects, are imposed on soldiers, and to the peculiar circumstances in which, from the nature of military service, soldiers are liable to be placed; so considered, those penal provisions do not appear to the Commissioners to be in their general character at variance with the principles of jurisprudence. They are such as it has usually been judged necessary to employ for the purpose of maintaining order and discipline in armies. Any parts of them of which the Commissioners see reason to question the propriety, will be pointed out in a subsequent part of this letter.

4. The Commissioners doubt whether the arrangement of the proposed articles of war is that which, on the whole, it is advisable to adopt. Those articles are arranged in the same manner as the general articles of war for the Queen's forces. There are, however, separate articles of war made by the Crown, under the authority of the Imperial Legislature, for the East India Company's European troops, and

See Act Geo. 4, c. 81, and the Rules and Articles

made under authority thereof. *See* Articles for the Company's European troops, sec. 21, Article 6; and Articles for the Queen's forces, No. 143.

and having also the force of law in the government of the Queen's forces in India, in all respects, in which they are not at all at variance with the general articles of war for the Queen's forces. The arrangement of those separate articles for the European troops in India is different from that followed in the articles for the royal forces throughout the empire, and the government of India is not competent to repeal, or in any way alter those separate articles.

5. The armies of Madras and Bombay are governed by articles of war, which were enacted by the governments of those presidencies, under authority given, and in the manner prescribed by Act of Parliament, and which are arranged in the same way as the articles of war for the Company's European troops. It would seem that no articles of war have ever been enacted in the prescribed manner for the army of Bengal. What, in a letter to my address, dated the 11th of last month, from the Officiating Secretary to the government of India in the military department, is described as a copy of the existing rules and articles of war for the native troops of the Bengal army, appears to be only a copy, together with a Persian and Hindoostanee version, of a selection of such of the rules contained in a former set of articles of war for the Company's European troops, as it was, at a period now remote, deemed proper to apply to the native troops.

6. The Law Commissioners submit, that it is a question which may be deserving of the consideration of government, whether in any new articles of war which it may be deemed proper to enact for the native forces, it will not be advisable to follow, as is done in the existing Madras and Bombay articles of war, the arrangement observed in the articles of war for the Company's European troops.

7. There is another question also relating to arrangement, though not to the arrangement among themselves of the rules composing the proposed articles of war, which, in the opinion of the Commissioners, deserves to be considered by the government. It is, whether it be advisable to embody in articles of war, as is done in the proposed new articles, those provisions of law which relate to military courts of requests, and those which authorize and regulate, under certain circumstances, the trial by courts martial of offences against the ordinary criminal law. The Law Commissioners think that it would be better to keep the provisions of law upon both of these subjects separate from the articles of war. That code which applies to a soldier, exclusively as a soldier, ought, in their opinion, to be kept distinct from rules relating to offences which he commits, and contracts which he makes, not as a soldier, but as a citizen.

8. I now proceed to state the observations which the Commissioners see occasion to offer on particular provisions in the proposed body of law.

9. Article 3 empowers the Commander-in-chief "to dismiss commissioned officers by an order." Hitherto this power has been held only by government. The Law Commissioners observe, that the propriety of the proposed change is questioned by the Right hon. the Governor-general, and by other members of the government. Their own opinion they do not hesitate to say, is strongly against the change. The commissions held by the native officers of the Bengal army, are given by the government of India; those held by the native officers of the armies of Fort St. George and Bombay, are given by the governments of those presidencies. The Law Commissioners think that there would be an obviously objectionable anomaly in the system of Indian administration, if any functionary, however high, not himself invested with the powers of a government, could by a mere order deprive an officer of a commission given by a government. To avoid the creation, or the continuance of this anomaly, by changing the authority which grants the commissions, so that no native officer should receive a commission from the government of India, or even from any of the subordinate governments, is a course of proceeding against which the Law Commissioners are sure that they need employ no arguments; but that the proposed provision would create an unseemly anomaly, is far from being, in the opinion of the Commissioners, the most weighty objections to which it is liable; on grounds of policy, it seems to them highly expedient that there should be, as there now are, classes of native officers in the armies of the East India Company, who cannot be dismissed from the service otherwise than by the sentence of a court martial, except in cases which are deemed such as to call for a special exercise of the authority of government.

10. Besides that the substance of this article is thus objectionable, in the opinion of the Commissioners, the wording of it appears to them to be wanting in precision. It is not clear whether by the words "the Commander-in-chief," is meant, as regards

regards the armies of Madras and Bombay, the Commander-in-chief of the army of the presidency, or the Commander-in-chief of all the Company's forces.

11. Under Article 20, an offender may be sentenced to transportation for life, or to imprisonment for a term which must not exceed four years. This limiting of the imprisonment of four years, while the transportation is allowed to be for life, is in accordance with the course usually followed in the legislation of England. But the feelings of the people with regard to transportation and to imprisonment are widely different in England and in India. A sentence of imprisonment for life is practically unknown in England, and would there be regarded as far more severe than a sentence of transportation for life. But in India the punishment of imprisonment for life, though it may be true that it would, in most cases, be attended with greater sufferings, is not generally looked upon as more severe, but rather as less severe than transportation for life. And in India, when the law makes an offence punishable with transportation for life, it usually makes that offence also punishable with imprisonment for life. The Law Commissioners think it advisable that the penal provisions of articles of war for the native troops should be so framed as in this respect to accord with the other penal laws of this country, that is to say, should be so framed as to make liability to imprisonment for life accompany liability to transportation for life. This, I am desired to observe, is done with respect to a great variety of offences, in provisions of the proposed articles of war preceding the one which has given occasion for these remarks.

12. The Commissioners, however, do not recommend that the offence defined in this article should be made punishable with imprisonment for life; they would rather suggest that it should not be made punishable with transportation. The fittest course in their opinion is, to provide by the articles of war the same punishment for that offence which is provided by the general criminal law for the like embezzlement by public servants.

13. In Article 30 are these words: "shall be punishable according to the sentence of a general or other court martial." In other articles, as well as in this one, it seems to be understood that there are certain punishments which a court martial is competent to inflict for offences for which specific punishments are not provided by the articles of war; but what punishments are within such competency does not appear to be anywhere stated. It seems to the Law Commissioners very desirable that any new code of military law which may be enacted for the native troops, should fully and distinctly specify the punishments falling within such competency in respect of each description of court martial.

14. Article 38 provides that for contempts committed in presence of a court martial, persons amenable to the article of war shall be punished by another court martial; and persons not amenable to such articles shall be transmitted to the civil magistrate, who shall proceed against them as if the offence had occurred in his own court.

15. The provisions relating to persons described as not amenable to the articles of war, and proceedings to be held in courts not military, if they are to be enacted at all, may, the Law Commissioners think, be enacted with more propriety in a separate law than in articles of war; and it will at any rate be necessary to define more precisely the courts to which it is intended to give the cognizance of charges of the kind stated against such persons. The Commissioners observe that the articles of war for the Company's European troops, the articles of war for the Madras army, and the articles of war for the Bombay army contain the following provision: "No person whatever shall use menacing words, signs, or gestures in the presence of a court martial then sitting, or shall cause any disorder or riot so as to disturb their proceedings, on the penalty of being punished at the discretion of the said court martial." The articles of war for the Royal forces contain the same provision, with only a slight difference in the wording.

Sec. 14, Art. 19.

Madras Reg. V. of 1827; sec. 9, Act 19.
Bombay Reg. II. of 1829, sec. 9, Act 20.

16. Article 47 of the proposed law provides for the punishment by courts martial of persons who, when duly summoned before a court martial, "shall not attend, or shall refuse to be sworn, or shall prevaricate in giving evidence;" there is no similar provision in the articles of war for the Royal forces, or in those for the Company's European troops, or in those for either of the native armies of Madras and Bombay. The Commissioners have further to observe on this provision, that in so far as it relates to prevarication, it is open to the objections to treating prevarication as a separate offence from perjury on the one hand, and refusal to answer on the other, which were stated on the part of the Commissioners, in

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in my letter to Mr. Secretary Macnaghten, dated the 9th of September 1837, No. 67.

17. Article 53 authorises the Commander-in-chief, or commanding officer for the time being at any presidency, to delegate the power of convening courts martial to any officer commanding a body of troops, with the proviso, "that when troops of different presidencies are serving together, such delegation shall be made by the Commander-in-chief in India." The Law Commissioners observe, that the case of there being no "Commander-in-chief of all the Company's forces in India," a case by no means of rare occurrence, appears to have been here overlooked.

18. Article 84 relates to military courts of request; it provides that "actions of debt and personal actions against military persons, shall be cognizable before such courts, and not elsewhere, provided that within the Company's territories the value litigated shall not exceed 200 rupees."

19. The Law Commissioners beg leave to draw the attention of the Government to an important exception, which is made in a corresponding provision, as regards actions of debt in the Madras Regulations. The exception is of such actions "as may be cognizable by the commissariat officer in charge of the police;" officers of the commissariat being at certain stations under that presidency placed in charge of the police, and invested with judicial powers. This exception, the Commissioners think, ought to be introduced into the article under remark; and a similar provision seems to be required with respect to the jurisdiction which, in the presidency of Bombay, the superintendent of military bazars has in cases of small debts. The Commissioners further observe, that the Madras rules provide absolutely that the value litigated shall not exceed 200 rupees, while by the article under remark that limitation is confined to the case of litigation "within the Company's provinces." The Commissioners think that even out of the Company's territories there ought to be some such limitation.

Madras Reg. V. sec. 12, Act 7.

20. Article 88 provides for the trial by courts martial, under certain circumstances, of persons charged with offences against the ordinary criminal law. The Commissioners would suggest that in this article, for the words, "where there is no court of civil judicature," there should be substituted the words "beyond the limits of the East India Company's territories;" and for the words "shall be tried," the words "shall be liable to be tried." The Commissioners also suggest that the words "with death or otherwise," should be omitted.

21. Article 90 relates to the powers of courts martial held for the prompt administration of criminal justice in districts which are the seat of rebellion, and where martial law has been proclaimed. According to the words of this article, strictly construed, any person owing allegiance to the British Government, is in such a state of things liable to be hanged, if he have been taken maliciously injuring any property belonging to any loyal subject, however clear the offender may be from any concern in the rebellion. This, it may be gathered from the context, is not intended; but it is desirable that the article should be so worded as to describe correctly the offences for the punishing of which it is meant to provide by it.

22. Article 92 contains the following provision: "No person amenable to these rules and articles of war shall be adjudged to suffer death or transportation, except for such crimes as are herein expressly declared so punishable." That no person ought to be adjudged to suffer death or transportation for any offence against military law, unless that law have expressly provided such punishment for that offence, admits of no question; but it is to be remembered that under Article 88, persons amenable to the articles of war will, under certain circumstances, be liable to be tried by courts martial for offences for which punishments are provided, not by the articles of war, but by ordinary criminal law, what punishment they shall be liable to be adjudged to suffer. For this reason, as well as on account of an ambiguity in the meaning of the expression as it stands, the Commissioners think that the concluding part of Article 88 would be improved by omitting, as already suggested, the words "with death or otherwise." And at any rate, if Article 88 be retained, they are of opinion that the provision above quoted from Article 92 ought to be modified as to except trials under Article 88.

23. Article 99 is as follows: "Persons professing the Christian religion, wherever born, or of whatever parentage, shall not be amenable to these rules and articles, but shall be subject to the Mutiny Acts and Articles of War in force from time to time for His Majesty's forces, or for the Honourable Company's troops, according

according to the nature of their service." This distinction between Christians and men of other religions, the Commissioners consider as exceedingly objectionable in principle, and as likely, if it were made law and acted on, to produce great evils in practice. The provision has probably been inserted under an impression that in the Company's armies there are no native Christian soldiers mingled with other native soldiers, and of precisely the same race and colour. Even if this were the case, the Commissioners would think the proposed distinction improper and dangerous; but the fact is, that at least in the native armies of Madras and Bombay, there are such native Christian soldiers mingled with other native soldiers. The distinction would, on this account, be the more improper and the more dangerous. The Commissioners are aware that it is considered by some authorities as a distinction made by the existing law. The Commissioners themselves think that opinion altogether groundless. Their sentiments on it are more fully submitted in my separate letter of this date, No. 91, in reply to Mr. Secretary Macnaghten's letter of the 9th October last. In reference to the concluding part of the article under remark, the Commissioners think it can hardly be necessary for them to observe that it is not within the competency of the Legislative Government of India either to restrict or to extend the classes of persons subject to the Mutiny Acts or Articles of War for the Queen's troops or the Company's European troops.

24. The foregoing observations are all which, with reference to the tenor of the instructions given them by the Government, the Commissioners see occasion to submit on the proposed new articles of war. To prevent misapprehension, however, they desire me to explain that they have not understood it to be the intention of Government that they should thoroughly revise those articles, in respect either of the substance or the language, and that they are very far from considering themselves as having executed such a revision.

25. The original papers which accompanied your letter are herewith returned.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
12 January 1838.

(No. 98.)

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Legis. Cons. 26 Feb. 1838. No. 10.

Sir,

With reference to the 19th paragraph of my letter of the 12th ult. on the subject of the proposed articles of war for the Honourable Company's native armies, I am directed by the Law Commissioners to address you for the purpose of pointing out to the Government certain provisions of the Madras Regulations, which from inadvertence were not taken notice of in that communication. Those provisions were overlooked, from the circumstance that they are not contained in the Regulation (V. of 1827,) which formally establishes articles of war for the Madras native troops, but in a subsequent enactment, Regulation VII. of 1832, at sections 21, 41, and 42.

2. Section 21 raises the limit of the value which may be litigated before military courts of the description referred to in the 19th paragraph of my letter of the 12th ult. from 200 to 400 rupees; but adheres to the principle of limiting that value absolutely, wherever the court may be held. The only alteration therefore which is required to make the statement in that paragraph quite correct, is the substituting of 400 for 200.

3. But by sections 41 and 42, other means are provided for the trial and decision of suits beyond the frontier, and under the provisions of the latter of these sections, suits for any sum, however large, may be decided in such situations. The Commissioners think it may be of advantage that the attention of the Government should be drawn to these provisions before making so great an alteration in this part of the existing law as would be effected, in regard to the troops of the Madras presidency, by the enacting of the proposed new articles of war; they also think that if, on the other hand, the Government should determine in making

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making new articles of war for all the native armies, to fix a limit even beyond the frontier to the value liable to be sued for in native military courts, those provisions of the Madras Regulations will deserve to be borne in mind when the question what means ought to be provided for deciding disputes which arise beyond the frontier, respecting an amount or value exceeding that limit, is under consideration.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
12 February 1838.

Legis. Cons.
26 February 1838.
No. 11.
Revision of the military code administering oath.

MINUTE by the Hon. *H. Shakespear*, Esq. dated the 27th February 1838.

THE Legislative Council having come to the determination, on a revision of the military code, that it is expedient to leave it optional with a witness examined before a court martial to make oath or not to the truth of his deposition, it being explained to him that in case of wilful falsehood he will render himself liable to the penalties of perjury, it is necessary for me, consistently with the opinion I have always held, and continue to hold, to record my dissent from the proposed rule.

The question has been so often and so fully discussed, and on every successive discussion the general abolition of oaths in judicial proceedings has been so strongly opposed, that it is unnecessary here to repeat the argument against it. I cannot help thinking, however, that if the measure is a wise one, it should be openly and broadly asserted, and not left to the nominal option of the witness, who will, of course, on every occasion avoid an obligation to which he is not required to subject himself.

(signed) *H. Shakespear.*

Legis. Cons.
26 February 1838.
No. 12.

FORT WILLIAM, Legislative Department, 26 February 1838.

(No. 10.)

READ again extract from Military Department, dated 18th Sept. 1837, with its enclosures; read also letters from officiating secretary to the Indian Law Commissioners, dated the 12th ultimo and 12th instant.

Resolution.

The Honourable the President of the Council of India in Council having had under consideration the papers above specified, and having reverted to the partial discussion of the subject which took place when the draft of the new rules and articles was first transmitted from the Military Department, proceeds to record the following resolution :—

Letter of Law Commrs. paras. 4—6.

2. His Honor in Council concurs with the Law Commissioners, that in the new articles of war for the native forces, it will be advisable to follow, as is done in the existing Madras and Bombay articles of war, the arrangement observed in the articles of war for the Company's European troops.

Para. 7.

3. The President in Council is also of opinion with the Law Commissioners, that those provisions of law which relate to military courts of request, and those which authorise and regulate, under certain circumstances, the trial by courts martial of offenders against the ordinary criminal law, ought not to be embodied in the new articles of war, it being clear that "that code, which applies to a soldier exclusively as a soldier, ought to be kept distinct from rules relating to offences which he commits, and contracts which he makes, not as a soldier, but as a citizen."

Paras. 9 and 10, Article 3.

4. The President in Council is of opinion, that the power of depriving an officer of a commission given by the Government, cannot with propriety be delegated to any functionary subordinate to the Government; that power ought to be exercised by the Government itself only upon extraordinary occasions; nor can his Honor in Council consent to transfer it to other hands than those of the Government, constituted as it is to control and protect the Indian army.

5. The Government would also reserve to itself the sole power of dismissing non-commissioned officers and soldiers otherwise than by the sentence of a court martial (which can only be necessary in extraordinary cases) at the representation of the Commander-in-chief.

6. His

6. His Honor in Council concurs generally with the remarks of the Law Commissioners as contained in these paragraphs; he thinks that the words "to be transported for life, or for a term of years," should be omitted, and that, in order to assimilate the punishment provided by the articles of war for embezzlement with that which will probably be provided by the general criminal law for embezzlement of a like nature by public servants, the words "for a term which may extend to three years" should be substituted for the words "not exceeding four years." Paras. 11 and 12, Article 20. *See* sect. 387 of the proposed penal code.

7. The President in Council entirely agrees with the Law Commissioners in opinion, that the new code of military law which it is proposed to enact for the native troops should fully and distinctly specify the punishments which each description of court martial is competent to inflict. Para. 13, Art. 30.

8. His Honor in Council is disposed to prefer the terms of the corresponding article in the articles of war for the Madras and Bombay armies respectively, as quoted on the margin, to that entered as Article 38 in the proposed new articles. If the military authorities think that contempts, other than those which may appear to be included in the article transcribed on the margin, should be provided for, they ought to be specifically added to the enumeration. Paras. 14 and 15, Art. 38.

"No person whatever shall use menacing words signs, or gestures in the presence of a court martial then sitting, or shall cause any disorder or riot so as to disturb their proceedings, on the penalty of being punished at the discretion of the said court martial."

9. For this article, the President in Council, concurring in the objections stated by the Law Commissioners "to treating prevarication as a separate offence from perjury on the one hand, and refusal to answer on the other," and being also of opinion that refusal to be sworn ought not to be treated as an offence, would substitute an article to the following effect: "Any officer, non-commissioned officer, or soldier, or any person amenable to the articles of war, who, when duly summoned before a court martial should not attend, or shall refuse to answer, shall be subjected to fine or imprisonment, or such other punishment as a court martial shall award. Any person as above objecting to take an oath, shall be examined on solemn declaration, but shall be liable to the penalty of perjury for saying anything under that sanction which, if he had taken an oath, would have rendered him so liable." Para. 16, Art. 47.

10. Due provision will be made in the Military Department for supplying the omission pointed out by the Law Commissioners in this paragraph. Para. 17, Art. 53.

11. His Honor in Council is of opinion that five officers ought to be declared sufficient to compose a general court martial in the Straits of Malacca, or elsewhere beyond seas. Article 54.

12. The President in Council entertains some doubt whether these articles are sufficiently explicit, and the question occurs whether a legal or simple majority be meant; that is, whether the majority is to be calculated from the number of members originally assembled, or from the number to which they may be reduced in the course of a trial. Articles 55 and 56.

13. His Honor in Council is of opinion that the oaths mentioned in these articles may be dispensed with, in the spirit of Act No. XXI. of 1837, and that the articles should be remodelled accordingly. Articles 62 and 63.

14. In this article, the double meaning of the word "evidence" might advantageously be avoided, by substituting for it the word "witness." Article 65.

15. For this article, the President in Council would substitute, "Any person, not military, having been so summoned, refusing or neglecting to attend, or who attending shall give such testimony as, if given in the civil court, would render him guilty of wilful and corrupt perjury, shall be liable to trial in a civil court, and on conviction shall suffer such penalties as may be in force against a person offending in any of the modes above specified in any civil court. Article 66.

"Any military person offending in any of the above modes may be tried by the same court martial, or another to be assembled for the purpose."

16. In this article, his Honor in Council would insert, after the words "four companies," the words, "or detachments numerically equal to four companies;" because it is understood not to be unusual for a field officer of artillery to be in command of several troops and companies belonging to several different corps of horse and foot artillery. Article 73.

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Article 76. 17. The President in Council would add to this article, "and solitary confinement for any period not exceeding 30 weeks, and loss of claim to additional pay for length of service."

Article 77. 18. His Honor in Council is of opinion that parties losing or injuring their arms by accident ought to be allowed the option of replacing or repairing them, without being brought to trial.

Article 78. *See* also proviso to Article 87. 19. The punishment of flogging having been abolished in the ranks of the native army, and in the criminal courts under the presidency of Fort William, for the worst offences committed by the worst classes of society, and as it is proposed to abolish it throughout the Company's territories in India, when a general penal code, founded on that submitted by the Law Commissioners, is introduced, the President in Council cannot sanction a law authorizing its infliction upon camp followers, until the most convincing proof be afforded that discipline cannot be preserved by any other mode of punishment.

Article 79. 20. His Honor in Council is of opinion that commanding officers should be empowered to inflict specified minor punishments, besides extra drill and extra duty, such as confinement in the guard, or other authorized place, not exceeding three days, without the intervention of courts martial.

Article 80. 21. The President in Council is of opinion that the power of reducing non-commissioned officers to the ranks should be vested solely in courts martial.

Letter of Law Commrs. paras. 18 and 19, Art. 84. 22. This article should be modified to meet the suggestion of the Law Commissioners contained in the first part of paragraph 19. The President in Council is of opinion that the maximum amount of debt cognizable by courts of requests within the Company's provinces should be raised from 200 rupees (as proposed in the article) to 400 rupees, as appears, from the Law Commissioners' letter of the 12th instant, to have been already done at Madras, by Sect. 21, Regulation VII. of 1832. Of the code of that presidency, his Honor in Council does not think that there ought to be any limitation in amount out of the Company's territories.

Letter of Law Commrs. para. 20, Art. 88. 23. Having considered the suggestions of the Law Commissioners upon this article, the President in Council is of opinion that it requires only the following modifications, viz. the insertion of the word "British" before "court of civil judicature;" and the substitution of the words, "shall be liable to be tried," for "shall be tried."

Para. 21, Art. 90. 24. The wording of this article ought to be amended in the manner proposed by the Law Commissioners in the paragraph cited on the margin.

Para. 22, Art. 92. *See* para. 3 of this Resolution. 25. The anomaly pointed out by the Law Commissioners in the latter end of this paragraph, will be got rid of, the President in Council remarks, by the adoption of their suggestion, that those provisions of law which authorize and regulate, under certain circumstances, the trial by courts martial of offenders against the ordinary criminal law, should be separated from those articles which are strictly articles of war; the word "specifically" should be substituted for "expressly."

Article 96. 26. His Honor in Council has some doubts in regard to the expediency of this article, as it relates to privates, specially under the presidency of Madras, where the sepoys are usually accompanied by their families, and are understood seldom to live on less than their full pay.

Article 97. 27. The President in Council does not think that any discretion should be left to the court martial, under the circumstances for which this article provides; if the prisoner satisfactorily prove all the points required for his justification, he is equitably entitled to the whole of his arrears; if otherwise, he ought to forfeit the whole.

Letter of Law Commrs. para. 23, Article 99. 28. For this article, for the obvious reasons stated by the Law Commissioners, his Honor in Council would substitute (though the new article ought, probably, to be inserted at or near the commencement of the rules), "That all persons serving with native corps, except such persons as are amenable to the rules and articles of war for the better government of the officers and soldiers in the service of the East India Company, made by the Crown, under the authority of the Imperial Legislature, shall be amenable to these rules and articles."

Order. Ordered, that a copy of this resolution, and of the correspondence with the Law Commissioners,

Commissioners, be transmitted to the Military Department, in reply to the extract received from that department, under date the 18th September 1837; and in order that measures may there be taken for remodelling the rules and articles in conformity with the sentiments of the Legislative Council expressed in this Resolution, ordered also, that when the rules and articles are again, after being so remodelled, forwarded to this department, they be accompanied by a memorandum exhibiting all the points of difference between the proposed rules and articles, and those for which it is intended that they should be substituted, and also indicating what matter is altogether new.

Ordered, that the original papers be returned.

(No. 358.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council in the Military Department, dated the 25th September 1837.

Legis. Cons. 26 Feb. 1838. No. 13.

READ a letter from the adjutant-general of the army, No. 278, under date the 16th ultimo, bringing to notice, in continuation of former correspondence, additional references that have been made to his Excellency the Commander-in-chief, relative to the punishment of Christian drummers and musicians attached to native corps, and conveying his Excellency's request to be informed in what manner this class of soldiers is to be dealt with.

Read also the adjutant-general's letter, No. 116, dated the 13th of April last.

Resolved, that the aforementioned letters from the adjutant-general of the army, with a copy of the answer thereto given, and the whole of the previous correspondence, be sent to the Legislative Department for consideration, with reference to the draft of rules and articles for the native soldiery, transferred on the 18th instant to that department, and to the circumstance noticed by the judge-advocate-general in his letters, Nos. 563 and 322, dated respectively the 2d November 1835 and 19th December 1836, viz. that the Christian drummers attached to native corps may or may not be British subjects.

Cons. 19 Sept. 1836, Nos. 14–18. Cons. 5 Dec. 1836, Nos. 22–25. 28–31. Cons. 9 Jan. 1837, Nos. 10, 11. 63–65. 69–71.

Ordered, that a copy of the foregoing Resolution, with all the papers therein referred to, be sent to the Legislative Department for consideration and the necessary orders.

Ordered, that the correspondence in original be returned to this department.

(True extract.)

(signed) *W. Casement*, M. G.
Secretary to the Government of India, Military Department.

(No. 357.)

From *W. Casement*, Major-general, Secretary to the Government of India, Military Department, to the Adjutant-general of the Army, Head Quarters.

Legis. Cons. 26 Feb. 1838. No. 14.

Sir,

I AM directed to acknowledge the receipt of your letters, Nos. 116 and 278, under dates the 13th of April and 16th ultimo, and to state in reply, for the information of his Excellency the Commander-in-chief, that the Governor-general of India in Council deems it inexpedient for the present to publish or sanction the publication of any order disturbing the existing arrangement for the trial of Christian drummers attached to native corps.

Military Dep.

2. The case of these drummers will be brought to the notice of the Legislative Department, in which the draft of revised rules and articles for the native troops is now under consideration.

3. In the meantime it will be sufficient to provide against the award or infliction of corporal punishment in this presidency, an object which, in the opinion of his Lordship in Council, would be most conveniently effected by informing the commanding officers of divisions, and stations, and of native corps of the Bengal army only, through the medium of a circular from your department, that corporal

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punishment by the lash is not among the punishments that may be awarded by a court martial to Christian drummers or musicians attached to any branch of the native army.

I am, &c.
(signed) *W. Casement*, M. G.
Secretary to the Government of India, Military Department.

Fort William, 25 Sept. 1837.

(True copy.)
(signed) *W. Casement*, M. G.
Secretary to the Government of India, Military Department.

(No. 357.)

Legis. Cons. 26 Feb. 1838. No. 15.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commissioners.

Sir,

Legislative.

Extract, Military Department, 25 Sept. 1837, No. 358, with its Enclosure to the Adjutant-general.
Letter from Adjutant-general of the Army, 16 Aug. 1837, with one Enclosure.
Letter from Adjutant-general of the Army, 13 Apr. 1837.
Military Cons. 19 September 1836, No. 14 to 18.
Military Cons. 5 Dec. 1836, No. 22 to 25, and 28 to 31.
Military Cons. 9 Jan. 1837, No. 10 & 11, 63 to 65, 69 to 71.

In continuation of my letter, No. 343, to your address of the 25th ultimo, I am directed by the Right hon. the Governor-general of India in Council to forward to you, for the purpose of their being submitted to the law Commission, the accompanying original papers, as per margin, relative to the punishment of Christain drummers and musicians attached to native corps.

2. You will be pleased to return the original papers with your reply.

I have, &c.
(signed) *W. H. Macnaghten*,
Secy to the Govt of India.

Council Chamber, 9 October 1837.

(No. 91.)

Legis. Cons. 26 Feb. 1838. No. 16.

From *J. P. Grant*, Esq. Officiating Secretary Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

I am directed by the Law Commissioners to acknowledge the receipt of Mr. Secretary Macnaghten's letter of the 9th of October last, referring to them, as connected with the subject of the proposed articles of war, a variety of papers recorded in a discussion which has taken place respecting the punishment of Christian drummers and musicians attached to native regiments.

2. The remarks of the Commissioners on the proposed articles of war are submitted to government by a separate letter of this date to your address. On the subject of the papers above acknowleged, the Commissioners desire me to offer the following observations :—

3. Two principal questions appear to be raised in these papers, one is whether the government of India has the power to exempt Christian drummers and musicians, attached to native regiments, from the punishment of flogging; the other, whether that government, by the orders which it has issued, has certainly granted that exemption to such drummers and musicians. It is agreed on all hands, that the government both has the power to grant, and has actually granted, that exemption to the native Mussulmen and Hindoo soldiers of its armies.

4. The Law Commissioners can perceive no ground for the opinion that a man's religion determines the question whether the government has the power to exempt him from being flogged; that the government can grant the exemption if he is not a Christian, but cannot grant it if he is. Neither those Acts of the Imperial Legislature, from which the government of India derives its powers, nor the Military Act, nor the Act for the government of the Company's European troops, make any distinction between Christian and men of other religions. The distinction

distinction which is made by Parliament, is between the European troops and the native troops. And even this distinction has reference only to the authority of the legislative, not to that of the executive government of India. It amounts to this, that the government of India can make laws for the discipline of the native troops, but not for that of the European troops. There seems no reason to doubt, that whatever the government is competent to do in respect of the native troops without making a law, the government is also competent to do in respect of the European troops in the same manner. But the measure by which an exemption from the punishment of flogging was granted to the soldiers of the East India Company's native armies was an order of the executive government, not a law; and all doubt, if there ever was any, as to the intention of that order, has been removed by the declarations of the government itself. It is quite clear that it is the desire of the government that the order should be applied to the case of drummers and musicians attached to native regiments, though those persons should be Christians, and though they should not only be Christians, but European-born British subjects.

5. To say that an European-born British subject cannot be amenable to the laws and articles of war made in India for the government of the native troops is, the Law Commissioners observe, to advance a proposition which, whether it be correct or not, in nowise bears upon the present question. It cannot be doubted that when native soldiers were punished with flogging, the punishment was legal; but if flogging was then a legal punishment for native soldiers, it is so still. The law has undergone no alteration; it is only in the administration of the law that a change has taken place. While, therefore, soldiers of every religion, and of every country are by law equally liable to the punishment of flogging, the Law Commissioners cannot perceive a shadow of reason in favour of the opinion that the government is competent so to direct the administration of the law that no Mussulman soldier shall be flogged, but is not competent so to direct the administration of the law that no Christian soldier shall be flogged; or that the government is competent so to direct the administration of the law that no native drummer shall be flogged, but is not competent so to direct the administration of the law that no Christian drummer shall be flogged. To the Law Commissioners, it appears to be perfectly clear, that in all these cases the powers of the government are precisely the same.

6. The original papers which accompanied your letter are herewith returned.

I have, &c.

Indian Law Commission,
12 January 1838.

(signed) *J. P. Grant*,
Officiating Secretary.

Fort William, Legislative Department, 26 February 1838.

Legis. Cons.
26 Feb. 1838.
No. 17.

(No. 9.)

Read an extract, Military Department, dated 25th September last, No. 358, relative to the punishment of Christian drummers and musicians attached to native corps.

Read also letter No. 91, from the Officiating Secretary to the Indian Law Commissioners, dated 12th January last, on the same subject.

Resolution.—The Honourable the President in Council remarks that the government has already determined that Christian drummers of the native army are entitled to the benefit of the general order abolishing flogging, and that they are not therefore liable to be flogged.

Ordered, that a copy of the foregoing Resolution be forwarded to the Military Department, in reply to the extract from that department above cited, and that the original papers which accompanied it be now returned.

No. II.—Part 1.
Articles of War.

(No. 166.)

Legis. Cons. 19 Nov. 1838, No. 5.

EXTRACT from the Proceedings of the Honourable the President in Council, in the Military Department, under date the 9th July 1838.

READ letters Nos. 175 and 177 from the Secretary to the Government of India, Military Department, with the Right honourable the Governor-general, dated the 31st May last, with enclosures to the latter.

Ordered, that copies of the despatches from Major-general Sir. W. Casement, K. C. B., abovementioned, together with the draft of rules and articles therein referred to, be transmitted to the Legislative Department, with reference to extract No. 10, from that Department, dated the 26th February last, and where in completing the revised code of the Articles of War for the better government of the native officers and soldiers in the service of the East India Company, the modifications proposed by the Right honourable the Governor-general which have received the concurrence of Government, will be attended to.

(True extract.)
(signed) *J. Stuart*, Lieut-Colonel,
Officiating Secretary to the Government of India,
Military Department.

(No. 175.—Military Department.)

From Major-general Sir *W. Casement*, K. C. B. Secretary to the Government of India, Military Department, with the Right honourable the Governor-general, to Lieutenant-colonel *J. Stuart*, Officiating Secretary to the Government of India, Military Department, Calcutta.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 422, of the 26th March last, with the papers therein referred to, relating to a revised code of articles of war, for the native armies of India, and to communicate the result of the Right honourable the Governor-general's consideration of the several points to which his attention has been directed.

Res. par. 2, Letter of Law Commrs. 12 Jan. 1838, pars. 4. 6.

2d. From the papers before him, the Governor-general does not understand that, as intimated in the 2d paragraph of your letter, the Legislative Department have recommended that the proposed rules and articles should "consist of a code of military regulations, and of articles of war framed with reference thereto," but only that they should be arranged and numbered in conformity to the articles for the East India Company's European troops, and not in conformity to the articles for the Queen's troops. The Governor-general observes, that, under the constitution of the government of India, no reason exists for making a distinction between military regulations and articles of war, corresponding to that between the provisions of a Mutiny Act, and articles of war founded thereon; and that an attempt to imitate such a model would lead to needless and inconvenient repetitions. If the intention be, that the proposed code should be divided into two parts, the 1st consisting of military regulations and the 2d of articles of war, though such an arrangement would not incur repetitions, yet there is no precedent for it in the articles for the Company's European troops, nor would it be attended with any advantage; but considering the objection of the Law Commission to have reference merely to the consecutive numeration of the articles from the first to the last, the Governor-general is of opinion that this plan, which was introduced into the articles for the Royal forces eight years ago, is recommended by its simplicity and facility of reference, and that as it may be expected to be adopted in the revised articles for the Company's European troops, the object of assimilation will be more surely attained by adopting the new arrangement than by adhering to the old.

Res. pars. 3, 25, Letter of Law Commrs. par. 7.

3. With respect to the introduction into the proposed articles of war of regulations respecting the jurisdiction of military courts of request and liability to trial by courts martial for non-military offences, where there are no British courts of civil

civil judicature, the Governor-general observes that the introduction of such provisions is sanctioned by the Mutiny Acts and articles for the Queen's army and for the Company's European troops, and that they could not be conveniently excluded.

4. The Governor-general concurs in opinion that in Article 3, the words "or from the Commander-in-chief" should be omitted, and also the words "non-commissioned officers and" and "non-commissioned officers or," but would retain the rest of the articles, inserting for the words "no commissioned" in the first line, "or non-commissioned." Res. par. 4, Letter of Law Commrs. par. 9, Art. 3.

5. The Governor-general concurs in the proposed alteration of Article 20. Res. par. 6, Art. 20.

6. The Governor-general observes that the powers of general and inferior courts martial are distinctly specified by Articles 76 and 92. Res. par. 7, Letter of Law Commrs. par. 13, Art. 30.

7. The Governor-general approves of Article 38, thinking that contempts will be more satisfactorily adjudicated by another court martial, and by the civil magistrate, when the offender is a non-military person. Res. par. 8, Letter of Law Commrs. pars. 14, 15, Art. 38.

8. In Article 47, omit the words, "shall prevaricate in giving evidence." It is implied, that refusal to be sworn is a contumacious refusal by a person not privileged to be examined on his solemn declaration, as some persons are under Articles 48, 67, 68. Therefore if the foregoing words be struck out of Article 47, there will be no occasion for the article proposed in the 9th paragraph of the resolution. Res. par. 9, Letter of Law Commrs. par. 16, Art. 47.

9. It appears expedient to omit Article 53. Res. par. 10, Letter of Law Commrs. par. 17, Art. 53.

10. In Article 54, instead of "shall not consist of less than seven," read "may consist of five, when a greater number cannot be conveniently assembled." Res. par. 11, Art. 54.

11. It appears to the Governor-general that Articles 55, 56, are sufficiently explicit; the majority is not to be calculated from the number of members originally assembled, but from the number to which they may be reduced, provided that number be not less than the minimum required by Articles 54, 74. Res. par. 12, Art. 55, 56.

12. The Governor-general is of opinion that the oaths contained in these articles could not be dispensed with, consistently with the express meaning and terms of the Article No. 21, of 1837, of which the second section provides that the dispensing power given by that law, "shall not extend to any oath now required by law to be taken in any stage of any judicial proceeding." It will also be in the recollection of the Honourable the President in Council, that in the preliminary resolution published with the first draft of the Act in question, the governments of the presidencies are specially enjoined (to guard against the possibility of the omission of an oath in proceedings of a judicial character, even when not judicial in term,) "to be particularly careful not to dispense with any oath which the law now requires in any stage of any proceeding which is in substance judicial." Upon these grounds, and having concurred in the principles on which the Act and resolutions in question were framed, his Lordship would adhere to the articles as they at present stand. Res. par. 13, Art. 62, 63.

13. In Article 65, for "evidence" read "witness." Res. par. 14, Art. 65.

14. The Governor-general approves of the article proposed to be substitutd for Article 66, with the exception of the last sentence, which is rendered unnecessary by Articles 47, 48. Res. par. 15, Art. 66.

15. In Article 73, add "or detachments numerically equal to four companies." Res. par. 16, Art. 73.

16. In Article 76, after "and," insert "loss of claim to additional pay for length of service, or solitary imprisonment; or" Res. par. 17, Art. 76.

17. The Governor-general approves of Article 77, considering the penalty to be incurred by negligence or misconduct. Res. par. 18, Art. 77.

18. In Article 78, instead of the words "or soldier," read "soldier or camp follower," and omit all the words after "flogged," and in Article 87, omit the four last lines. Res. par. 19, Art. 78–87.

19. In Article 79, after "days," add, "or confinement in the quarter-guard not exceeding three days." Res. par 20, Art. 79.

Res. par. 21, Art. 80.

20. In Article 80, omit the words after " court martial."

Res. par. 22, Letter of Law Commrs. par. 19, and Letter of 12 Feb. pars. 2, 3, Art. 84.

21. The Governor-general approves of Article 84, which is in conformity to the existing regulations for the Bengal army.

Res. par. 23, Letter, Law Commrs. par. 20, Art. 88.

22. In Article 88, insert " British" before " court," and " liable to be" before " tried."

Res. par. 24, Letter Law Commrs. par. 21, Art. 90.

23. In Article 90, after " seven officers," omit " at the least;" before " maliciously," insert, " who may be assisting in rebellion by," and after " other manner," omit " assisting in rebellion."

Res. par. 25, Letter, Law Commrs. par. 2, Art. 92.

24. In Article 92, insert " military" before " crimes," and after " punishable," insert, " or which may be so punishable under Article 88."

Res. par. 27.

25. As officers, civil and military, are subject to some deductions from their allowances if unavoidably absent from their duty on sick certificate, it appears expedient to leave the claims of returned prisoners to the whole of their arrears to the discretion of a court martial.

Res. par. 28, Letter, Law Commrs. par. 23, Art. 99.

26. The article proposed to be substituted for Article 99, leaves unaltered an effect of the existing law, which is not only anomalous, but highly unjust and indecorous. There are a few officers in the regular and local corps of the Bengal army (and probably there are some in the army of Madras and Bombay), who being the illegitimate sons of British subjects by native mothers, are not British subjects (in the sense in which that word is used in Acts of Parliament and charters relating to the administration of justice in India, as contradistinguished from natives of India) but natives of the East Indies, and by the 62d section of the 4 Geo. 4, c. 81, excepted from the provisions of that article; they are, therefore, amenable to native courts martial and courts of requests, and for non-military offences committed beyond the jurisdiction of the Supreme Court to the Company's courts, without the privilege of trial by jury. Until the condition of such persons shall be more adequately provided for, the Governor-general is of opinion that the following article, in conformity with the existing practice, founded on G. O. C. C. 6 July 1802, should be substituted for Article 99:—

" Persons subject to these rules and articles, of European descent, and professing the Christian religion, shall be amenable to courts martial and courts of requests, composed of European officers."

27. The original documents which accompanied your letter are herewith returned.

I am, &c.
(signed) *W. Casement*, M. G.
Secy to the Government of India, Military Department,
with the Right hon. the Governor-general.

Simla, 31 May 1838.

(No. 177.—Military Department.)

From Major-general Sir *W. Casement*, K. C.B. Secretary to the Government of India, Military Department, with the Right honourable the Governor-general, to Lieutenant-colonel *J. Stuart*, Officiating Secretary to the Government of India, Military Department, Calcutta.

Sir,

In continuation of my letter, No. 175, of this date, I am directed by the Right honourable the Governor-general to transmit to you herewith, for the information of the Honourable the President in Council, and for record in your office, the documents specified in the margin.

Original letter, No. 206, from the adjutant-general of the army, dated 18th ult. and its enclosure. Copy of letter, No. 176, to ditto, in reply, dated this day.

I am, &c.
(signed) *W. Casement*, M. G.
Secy to the Government of India, Military Department,
with the Right hon. the Governor-general.

Simla, 31 May 1838.

(No. 206.)

From the Adjutant-general of the Army to the Secretary to the Government of India, Military Department, with the Right honourable the Governor-general.

Sir,

I am instructed by his Excellency the Commander-in-chief to request that you will be so good as to bring to the notice of the Right honourable the Governor-general the letter which was addressed to you from the Adjutant-general's office, by his Excellency's order, under date the 13th January 1837, No. 18.

Notwithstanding the opinion which his Excellency expressed in the last paragraph of that letter, 15 months have elapsed before the decision of the Government has been afforded to him. Transmitting letter dated January 1837.

That decision reached him yesterday, and he is informed that "the form into which the military regulations and articles of war have been cast by his Excellency's orders for the purpose of assimilating as nearly as possible to Her Majesty's articles of war, has been disproved of in the Legislative Department, as being at variance with that adopted by the Legislature and the King in the case of the Company's European troops."

His Excellency requests that the Right honourable the Governor-general will observe that in the 4th paragraph of the letter of January 1837, he stated that he had caused "the form of the manuscript to be altered, and the crimes and punishments to be classed," (as they are in the modern articles for the Royal army,) with the view of placing them "as nearly in accordance with the articles issued to Her Majesty's army as they appeared capable of being."

It appears that this endeavour has been disapproved by the Legislative Department, and the reason assigned is, because they "are at variance with that adopted by the Legislature and the King in the case of the Company's European troops."

His Excellency is not sure that he understands what this sentence is intended to convey; but he imagines that it means, because the revised articles are differently arranged from the mode adopted in the year 1823 (the date of the Act 4, Geo. 4).

If this is so, since he pointed out the variation in the letter before quoted of January 1837, a delay of 15 months in communicating the same to him would seem to have been very unnecessary.

Be this, however, as it may, the labours of his Excellency and of the Adjutant-general of the army, aided by the two officers of the Judge Advocate-general's department, having failed to be satisfactory to the government, his Excellency has only to lament the circumstance, and to report in the strongest form his opinion that the alterations which have taken place in the powers of courts martial by the abolition of corporal punishment in the native army, and by the numerous ameliorations which have been introduced by the Imperial Parliament into the Annual Mutiny Act and the articles of war for the Royal army, render a revision of the Act 4 Geo. 4, c. 81, and an alteration of the articles of war for the Honourable Company's army imperatively necessary; and that it is highly expedient that no time should be lost in preparing such as shall be applicable to the armies of the three presidencies in the East Indies. Major Young and Captain Birch.

He deems it his duty to call on the Supreme Government to place this business in hands which may complete it satisfactorily and speedily, and having done so, he takes leave of the subject.

I have, &c.

Head-quarters,
Simla, 18 April 1838.

(signed) *J. R. Lumley*, M. G.
Adj^{t} Gen^{l} of the Army.

(No. 18.)

From Captain *P. Craigie*, Assistant Adjutant-general of the Army, to the Secretary to the Governor-general of India in Council, Military Department, dated 13 January 1837.

Sir,

I am instructed by his Excellency the Commander-in-chief to forward, with a view to being laid before the Right hon. the Governor-general in Council, a revised draught of articles of war, prepared to meet the purposes of the whole of the army in India.

No. II.—Part 1.
Articles of War.

When his Excellency first assumed the command of the army, he found that some progress had been made in a revision of these articles, and that the opinions of the Madras and Bombay authorities had been sought for with reference to the fitness of what was proposed.

Committee:—Colonel Lumley, Adjutant-gen. of the army; Major Young, Judge Advocate-general; Captain Birch, Deputy Judge Advocate-general.

Replies were received from both presidencies, and the suggestions offered by them were ingrafted on the original draft, and arranged by a committee of officers in Calcutta.

His Excellency the Commander-in-chief having carefully considered the whole, and offered such remarks as appeared to him necessary, caused the form of the manuscript to be altered, and the various crimes and punishments to be classed, and placed as nearly in accordance with the articles issued to his Majesty's army as they appeared capable of being.

He now submits them to the Right hon. the Governor-general in Council, praying that they may be carefully revised by the proper legal authorities, and that they may be forthwith again submitted in their revised state to the Judge Advocate-general of the Madras and Bombay armies, should his Lordship in Council deem it necessary, so that as little delay as possible may occur before their promulgation.

Nos. 1, 2, 3.

Together with the revised articles he directs me to forward parcels, as per margin.

He further desires me to submit his opinion, that no time ought to be lost in revising the Act 4, Geo. 4, c. 81, as there are various points in that enactment which new circumstances have rendered inapplicable to the armies of India, and there are many others which have reference to the Honourable Company's European troops which appear to his Excellency to require to be placed in accordance with those which apply to his Majesty's troops as enacted in 4 Will. 4, c. 8.

(True copy.)

Head-quarters, Camp,
13 Jan. 1837.

(signed) *J. R. Lumley*, M. G.
Adj^{t} Gen^{l} of the Army.

(No. 176.)

To Major-general *J. R. Lumley*, Adjutant-general of the Army, Military Department.

Sir,

I HAVE the honour to acknowledge the receipt of your despatch, No. 206, of the 18th ultimo, and in reply am directed to acquaint you, for the information of his Excellency the Commander-in-chief, that the Right honourable the Governor-general having received a communication from Calcutta relating to the revised code of articles of war for the native armies of India, with suggestions from the Legislative Commission and the government at the presidency, his Lordship has signified his pleasure in regard to the modifications proposed and deemed advisable, and he hopes that no great delay will now take place in the final disposal of the subject.

2. His Honor in Council has been informed that the Governor-general is of opinion that the consecutive enumeration of the articles, from the first to the last, which was introduced into the articles for the royal forms eight years ago, is recommended by its simplicity and facility of reference, and that as it may be expected to be adopted in the revised articles for the Company's European troops, the object of assimilation will be more surely attained by adopting the new arrangement than by adhering to the old.

I have, &c.

Head-quarters, Simla,
31 May 1838.

(signed) *W. Casement*, M. G.
Sec^{y} to the Gov^{t} of India, Mil^{y} Dep^{t}, with the Rt. hon. the Gov^{r} Gen^{l}.

(True copy.)

(signed) *W. Casement*, M. G.
Sec^{y} to the Gov^{t} of India, Mil^{y} Dep^{t}, with the Rt. hon. the Gov^{r} Gen^{l}.

(True copies.)

(signed) *J. Stuart*, Lt. Col.
Offg Sec^{y} to the Gov^{t} of India, Mil^{y} Dep^{t}.

Legis. Cons.
19 Nov. 1838.
No. 6.

Section I.

Of Enlisting and Discharges.

Articles of war and declaration to be read, and oath to be administered to all recruits.

Art. 1. Every recruit, prior to being enrolled in his regiment, shall have the articles of war relating to mutiny and desertion read and explained to him, after which the following declaration shall be made to him by the officer commanding, in front of the regiment, in presence of the native officers and soldiers.

Declaration.

Declaration.

"In time of peace, after having served five years, on making application for your discharge through the commanding officer of your company, it will be granted you within three months from the date of your application, provided it will not cause the vacancies in your company to exceed 10, in which case you shall remain until that objection be removed; but in time of war you have no claim to a discharge, but shall remain and do your duty until the necessity of retaining you in the service shall cease."

The following oath shall then be required from him, according to the forms of his religion, in front of the colours.

Oath.

Oath.

"I, *A. B.*, inhabitant of village purgunnah subah son of do swear that I will never forsake or abandon my colours [the word guns to be substituted for colours in swearing in artillery recruits]; that I will march wherever I am directed, whether within or beyond the Company's territories; that I will implicitly obey all the orders of my superior officers, and in everything behave myself as becomes a good soldier, and faithful servant of the State."

Recruits for general service.

Art. 2. And when any recruit is enlisted for a regiment raised for general service, the following words shall be added to the declaration made to him previously to enrolment:

"And you engage to embark on board ship whenever the service shall require your proceeding by sea." [And the following words shall be added to the form of oath for all recruits for those regiments]: "And I do further swear that I will readily embark on board ship whenever the service shall require me to proceed by sea."

Commissioned officers, non-commissioned officers, and soldiers, by what authority to be dismissed the service.

Art. 3. No commissioned officer shall be dismissed excepting by the sentence of a general court martial; no non-commissioned officer or soldier shall be discharged except by the sentence of a court martial. Every such dismissal or discharge shall include forfeiture of all claim to pension; provided that no sentence of discharge awarded by a court martial inferior to general shall be carried into effect without the concurrence of the general or other officer commanding the division, district, or field force, with which the prisoner may be serving; provided also, that the Governor-general in Council, in his executive capacity, and the Governor in Council of any presidency to which a commissioned or non-commissioned officer or soldier may belong, shall have power to order his dismissal or discharge.

It is a matter of frequent occurrence that the Commander-in-chief is called upon to discharge soldiers on accounts which perhaps could not be taken cognizance of by a court martial.

To deprive the Commander-in-chief of this power will, in my opinion, be highly injurious to the discipline of the army.

Soldiers under three years' standing, who prove unlikely to be useful as such, are frequently discharged by the Commander-in-chief on statements of the fact by commanding officers of regiments, and it will be inconvenient and detrimental to the service to alter this.

(signed) *H. Fane.*

Non-commissioned officers and soldiers to be furnished with a discharge certificate.

Art. 4. All non-commissioned officers and soldiers discharged the service, shall be furnished by the commanding officer of the regiment with a discharge certificate, made out in the vernacular language of the individual discharged, with an English translation, expressing the authority for, or cause of such discharge, and the period of their service in the regiment to which they may at the time belong.

Penalty of enlisting in other regiments, &c. without a discharge from former regiment.

Art. 5. No non-commissioned officer or soldier shall enlist himself in any other regiment, without a regular discharge from his former corps, under the penalty of being reputed a deserter, and suffering accordingly.

Section II.

Crimes and Punishments:

Crimes punishable with Death, Transportation, or Imprisonment.

Penalty of mutiny.

Art 6. Any officer, non-commissioned officer, or soldier, who shall begin, excite, cause, or join in any mutiny or sedition in the regiment or corps to which he belongs, or in any other corps or regiment in the service, or serving as allies, on any pretence whatsoever, or who being present at any mutiny or sedition shall not use his utmost endeavours to suppress it, or who coming to the knowledge of any mutiny, intended mutiny, or concealed combination against the State, who shall not without delay give information thereof to his commanding officer; or,

Penalty of striking or drawing any weapon against a superior officer, &c.

Art. 7. Who shall strike his superior officer, or shall draw, or offer to draw, or lift up any weapon, or use or offer any violence against him on any pretence whatever, or shall disobey any lawful command of his superior officer; or,

Penalty of desertion.

Art. 8. Who shall be guilty of desertion; or,

Penalty if a sentry be found sleeping on his post, or of quitting it before he is relieved, in time of war or alarm.

Art. 9. Who, in time of war or alarm, shall be found sleeping upon his post, or shall leave it before regularly relieved; or,

Penalty of doing violence to any person who brings provisions to the camp or quarters, in time of war or alarm.

Art. 10. Who, in time of war or alarm, shall do violence to any person bringing provisions or other necessaries to the cantonment or camp of the troops employed, or shall force a safeguard; or,

Penalty of making known the watchword.

Art. 11. Who shall treacherously make known the watchword to any person not entitled to receive it according to the rules and discipline of war; or,

Penalty of making false alarms in camp or quarters.

Art. 12. Who, in time of war, shall by discharging of fire-arms, drawing of swords, beating drums, making signals, using words, or by any means whatsoever intentionally occasion false alarms in action, camp, garrison, or quarters; or,

Penalty of holding correspondence with, or giving intelligence to the enemy.

Art. 13. Who shall be convicted of holding correspondence with, or giving intelligence to the enemy, or any person in rebellion, either directly or indirectly, or coming to the knowledge of such correspondence, shall not discover it immediately to his commanding officer; or,

Penalty of relieving or harbouring an enemy.

Art. 14. Who shall directly or indirectly assist or relieve the enemy, or persons in rebellion, with money, victuals, or ammunition, or shall knowingly harbour or protect an enemy or rebel; or,

Penalty of going in search of plunder.

Art. 15. Who shall leave his commanding officer, or his post, or company, in time of action, or go in search of plunder; or,

Penalty of casting away arms or ammunition.

Art. 16. Who shall, in presence of an enemy, cast away his arms or ammunition; or,

Penalty of misbehaving before the enemy.

Art. 17. Who shall misbehave himself before the enemy, or use means to induce others so to misbehave; or,

Penalty of shamefully abandoning, &c. to the enemy any garrison, fortress, &c.

Art. 18. Who shall shamefully abandon, or deliver up to the enemy any garrison, fortress, post, or guard, committed to his charge, or which it was his duty to defend, or who shall use means to induce any other officer, non-commissioned officer, or soldier, so to abandon or deliver up any such garrison, fortress, post, or guard; or,

Penalty of treacherously suffering an enemy to escape.

Art. 19. Who shall treacherously release, wilfully aid, or connive at the escape of any enemy or rebel placed as a prisoner under his charge, shall suffer death or transportation for life, or any term of years, or imprisonment, with or without hard labour, for life, or for any term of years, as a general court martial shall award, together with solitary confinement for any portion or portions of the term of imprisonment, not exceeding one month at a time, or three months in the space of one year.

Crimes subject to Three Years' Imprisonment.

Penalty of selling stores, &c. the property of Government.

Art. 20. Any officer, non-commissioned officer, or soldier, who shall embezzle or fraudulently misapply any money entrusted to him on the public account, or for any military purpose, or any provisions, forage, arms, clothing, ammunition, or military

military stores, of whatever kind or description, the property of Government entrusted to his charge, or who shall be concerned in, or connive at any such embezzlement, or fraudulent misapplication, shall, on conviction thereof before a court martial, be dismissed the service and fined to the extent of the loss or damage, and be further liable to suffer imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portion or portions of such term not exceeding one month at a time, or three months in the space of one year.

Crimes subject to Punishments vested in General Courts Martial by Articles, or in all Courts Martial by Articles.

I cannot see any advantage to be derived from this heading, and think that it will be best to omit it.
(signed) *H. Fane.*

Art. 21. Any officer, non-commissioned officer, or soldier, who shall be convicted of having advised or persuaded any other officer, non-commissioned officer, or soldier to desert, or having connived at such desertion; or,

Penalty of persuading any one to desert.

Art. 22. Who being on leave of absence shall have received information from the head-quarters of his regiment, or from other competent authority, that his regiment has been ordered on service, and shall not rejoin without delay; or,

Penalty of not joining from leave without delay, when corps is ordered on service.

Art. 23. Who, directly or indirectly, shall require or accept a bribe, present, or gratification, on the pretence of procuring leave of absence, promotion, or any other advantage or indulgence for any officer, non-commissioned officer, or soldier; or,

Penalty of taking a bribe for procuring leave, &c.

Art. 24. Who, in time of peace shall, by discharging fire-arms, drawing swords, beating drums, or by any other means whatever, occasion false alarms in camp, garrison, or quarters; or,

Penalty of occasioning false alarms in time of peace.

Art. 25. Who shall be found two miles from the camp without leave; or,

Penalty of being two miles from camp without leave.

Art. 26. Who shall be absent from his cantonment after tattoo, or from camp after retreat beating, without leave from his superior officer; or,

Penalty of remaining at night out of camp quarters.

Art. 27. Who shall fail to repair at the time fixed, to the parade or place appointed, if not prevented by sickness or some other sufficient cause; or,

Penalty of not repairing at the time fixed to the parade, &c.

Art. 28. Who shall, without urgent necessity, or without leave of his superior officer, quit his company or troop; or,

Penalty of quitting company or troop without leave.

Art. 29. Who shall quit his guard or post without being regularly dismissed or relieved; or,

Penalty of quitting guard or post without being relieved, &c.

Art. 30. Who being in command of a guard shall refuse to receive any prisoner duly committed to his charge, or shall without proper authority release any prisoner, or shall suffer, through carelessness or neglect, any prisoner to escape; or,

Penalty of releasing a prisoner without orders or suffering him to escape.

Art. 31. Who, being in command at any post, or on the march, on complaint made to him of any person under his command beating or otherwise ill-treating any person, or extorting from him more than he is obliged to furnish by authority, or disturbing fairs or markets, or committing any kind of riot, shall not see reparation done to the party or parties injured; or if that be impracticable, shall not report the same to his superior officer, shall be punished, if an officer, according to the sentence of a general court martial, with any such punishment or punishments a general court martial and all courts martial are enabled to inflict by articles; if a non-commissioned officer or soldier, according to the sentence of any court martial, with such punishment or punishments as all courts martial are enabled to inflict by articles.

Penalty of not seeing reparation done to persons ill-treated, &c.

I do not perceive any imprisonment which is made by the reconstruction of this article.
(signed) *H. Fane.*

Crimes punishable with Dismissal in an Officer, in a Non-commissioned Officer, or Soldier, as in Articles.

The headings as in the articles for Her Majesty's troops, as adopted in the original draft, appear to me more simple and preferable.
(signed) *H. Fane.*

Art. 32. Any officer, non-commissioned officer, or soldier, who shall knowingly enlist a deserter, or shall not after his being discovered, immediately cause him to be confined and give notice thereof to the nearest commissioned officer; or,

Penalty of entertaining and not confining deserters.

Penalty of drunkenness on duty.

Art. 33. Who shall be found drunk on duty; or,

Penalty of striking or doing violence to a sentry.

Art. 34. Who shall strike or do violence to a sentry; or,

Penalty of false returns or reports.

Art. 35. Who shall knowingly make a false return or report to any of his superior officers authorised to call for such return or report, of the state of the men under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, or of which he may otherwise have charge; or,

Penalty of false certificates, &c. to obtain pension, &c.

Art. 36. Who shall be convicted of obtaining, or attempting to obtain, for himself, any officer, or soldier, or for any other person whatever, any pension or allowance, by any false statement, certificate, or document, or by the omission of the true statement; or,

Penalty of disgraceful conduct of commissioned officers.

Art. 37. Who being an officer, shall behave in a manner unbecoming the character of an officer, the fact or facts whereon the charge is grounded being clearly specified, shall, if an officer, on conviction thereof before a general court martial, be dismissed the service; and if a non-commissioned officer or soldier, shall, on conviction thereof, be punished according to the sentence of any court martial, with any such punishment or punishments as all courts martial are enabled to inflict by articles.

Crime punishable by Dismissal, or under Articles.

Penalty of breach of arrest.

Art. 38. Whatsoever officer under arrest shall leave his confinement before he is set at liberty by competent authority, shall, according to the sentence of a general court martial, be dismissed the service, or be punished with any punishment or punishments that may be applicable, which general courts martial *and all courts martial* are enabled to inflict by articles.

No court martial but a general court martial can try an officer; this alteration of the original is therefore erroneous.

(signed) *H. Fane.*

Crimes punishable with Restitution, and under Articles.

Penalty of stealing from a comrade, &c.

Art. 39. Whatsoever non-commissioned officer or soldier shall be convicted of stealing money or goods, the property of a comrade, or of a military officer, or of committing any petty offence of a fraudulent nature, to the injury of, or with intent to injure, any person, civil or military, shall be punishable according to the sentence of any court martial, with such punishment or punishments as all courts martial are enabled to inflict by articles, and the property so fraudulently obtained shall be restored to the owner.

Crimes punishable with Compensation, and under Articles.

Penalty of committing any waste or spoil in towns, villages, gardens, &c.

Art. 40. Any officer, non-commissioned officer, or soldier, who shall without orders commit waste or plunder, either in towns or villages, gardens or fields, or shall injure or destroy the property, or shall do violence on the person of any of the inhabitants; or,

Penalty of extorting money, &c. as fees, duties, on any pretence whatsoever.

Art. 41. Any commissioned officer commanding at any post, or on the march, who shall on any pretence whatever, illegally, and against the will of the parties, extort money or other property, or services; or,

Penalty of a non-commissioned officer or soldier extorting money, &c. as fees, on any pretence whatsoever.

Art. 42. Any non-commissioned officer or soldier, at any post, or on the march, who shall extort money or property of any description, as fees or duties, or on any pretence whatever, or shall without authority exact from villagers or others, carriage, porterage, or provisions; or,

Penalty of selling or wasting ammunition delivered out.

Art. 43. Who shall sell, lose, or designedly or through neglect waste the ammunition delivered out to him; or,

Penalty of spoiling, &c. horse, arms, &c.

Art. 44. Who shall sell, or designedly or through neglect lose or injure his horse, or spoil his arms, clothes, accoutrements, or regimental necessaries, shall make compensation for the injury, loss, or damage sustained; and such loss, injury, or damage shall

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in the case of any non-commissioned officer or soldier be made good by monthly stoppages, not exceeding half his pay and allowances.

And shall, if an officer, be punishable according to articles; if a non-commissioned officer or soldier, according to articles.

Crime Punishable with forfeiture of Pay, and under Articles.

Art. 45. Any officer, non-commissioned officer, or soldier, who shall absent himself without leave, or shall without sufficient cause, overstay the period for which leave may have been granted him, shall forfeit his pay and allowances for the time he may have been so irregularly absent, and be further liable to be punished by the sentence of any court martial, with any punishment or punishments, which all courts martial are enabled to inflict by articles.

Penalty of being absent without leave and of overstaying the period of leave.

Crime punishable with Dismissal, Forfeiture of Pension, and under Articles.

Art. 46. Whatsoever commissioned officer or soldier shall be convicted of feigning or producing disease or infirmity shall, if a commissioned officer, be dismissed the service; and if a non-commissioned officer or soldier, shall forfeit all claim to pension on discharge, in addition to such other punishment as may by any court martial be awarded under articles.

Penalty of malingering, &c.

Crimes incident to Court Martial.

Art. 47. Any person amenable to these articles of war who, when duly summoned before a court martial shall not attend, or shall refuse to be sworn, or to give evidence upon solemn affirmation or declaration, as hereinafter is mentioned, shall be subjected to a fine not exceeding a thousand rupees, and to such punishments as any court martial is enabled to inflict by articles.

Penalty of not attending when summoned as a witness before a court martial, or of refusing to be sworn.

Art. 48. Whatsoever officer shall be found guilty by a general court martial of perjury by wilfully and knowingly giving false evidence on oath, or solemn affirmation or declaration, on any trial before any other general or other court martial entitled to administer an oath, shall be dismissed the service, and be further subject by the sentence of a general court martial to fine to the amount of his arrears of pay and allowances, or imprisonment, which may extend to three years; and every non-commissioned officer or soldier so convicted shall be dismissed the service, and be liable to suffer such other punishment or punishments as any court martial may award under articles.

Penalty of perjury.

An omission here, which has reference to courts of request.

(signed) *H. Fane.*

Art. 49. Any person not amenable to these articles of war having been summoned upon any court martial as hereinafter mentioned, and refusing or neglecting to attend, or who attending shall give such testimony as, if given in a civil court, would render him guilty of perjury, shall be liable to trial in a civil court, and on conviction shall suffer such penalties as may be in force against a person offending in like manner in any civil court.

How punished for not attending, or for perjury.

Art. 50. Any person using menacing words, signs, or gestures, in the presence of a court martial then sitting, or causing any disorder or riot, so as to disturb their proceedings, shall be punished according to the nature and degree of his offence by the judgment of the same court martial, with imprisonment for any term not exceeding three months.

Penalty of using menacing words, gestures, &c. before court martial.

I disagree: a court of 13 officers, under irritation at an insult offered to them, are not, in my opinion, a proper tribunal to judge the offence.

The limitation of the amount of punishment I also disapprove; as cases have frequently occurred, and may again, in which that punishment would be exceedingly inadequate.

(signed) *H. Fane.*

Section III.

Administration of Justice.

General courts martial, by whom convened.

Art. 51. The Commander-in-chief, or commanding officer of the forces for the time being at the presidency to which the prisoner to be tried may belong, is empowered to convene general courts martial for the trial and punishment of all offences specified in these articles.

General courts martial, how constituted; not ordinarily to consist of less than 13 commissioned officers; when may consist of five.

Art. 52. A general court martial shall not consist of less than 13 commissioned officers, unless it be held out of the Honourable Company's territories, where a general court martial may consist of five commissioned officers, if a greater number cannot in the judgment of the convening officer be conveniently assembled.

No sentence to be put in execution until confirmed.

Art. 53. No sentence of a general court martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-chief of the forces for the time being at the presidency to which the prisoner may belong, and until he shall have confirmed the same.

Courts martial, not being general, by whom appointed.

Art. 54. The commanding officer of every station, cantonment, garrison, detachment, or regiment, may assemble courts martial, not being general courts martial, according to the nature of his command, for the trial and punishment of all offences specified in these articles where general courts martial have not exclusive jurisdiction.

Sentence to be confirmed by the commanding officer previous to execution.

No sentence awarded by such courts martial shall be carried into effect until the commanding officer shall have confirmed it.

No officer commanding less than four companies to confirm the sentence of a court martial.

Art. 55. No officer on detached command of less than four companies of detachments numerically equal to four companies, shall carry into execution any punishment awarded by a court martial held by his order, until the sentence shall have been confirmed by the officer commanding the regiment to which the offender belongs, except when an immediate example is necessary.

Three, when sufficient.

Art. 56. Courts martial not being general shall consist of native officers. They shall not consist of less than five officers, excepting where that number cannot conveniently be assembled, when three shall be sufficient, of whom the senior officer shall be president.

A misunderstanding seems to exist, leading to this change, in the original draught. All courts martial, for the trial of native culprits, are composed of native officers.

(signed) *H. Fane.*

Senior officer to preside at general courts martial.

Art. 57. At all general courts martial, the senior officer shall sit as president, without being so appointed by warrant.

At all inferior courts martial an European officer to superintend.

Art. 58. At all courts martial inferior to general, an European officer of not less than five years' standing in the service, except in cases where no officer of that standing may be available, shall be appointed to conduct the proceedings.

Art. 59. An interpreter, if practicable, shall be appointed to all courts martial.

Hours of sitting.

Art. 60. Trials by courts martial may be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

Art. 61. Forms of proceeding on the assembly of the court: the Judge-advocate or superintending European officer shall administer to the interpreter the following oath.

Oath.

Oath to be taken by the interpreter.

"I, *A. B.*, swear that I will faithfully interpret and translate the proceedings of the court, and that I will not divulge the sentence until it shall have been approved or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or court martial in due course of law.

"So help me God."

Oath by members of the court.

In case of the unavoidable absence of an interpreter, the European superintending officer of a court martial inferior to general, shall take the oath prescribed for the interpreter.

interpreter. The Judge-advocate or superintending officer shall then cause the following declaration to be made by each member on oath, according to the forms of his religion :—

As a doubt on this subject is expressed in Mr. Amos's Minute, it may be useful to point out that Hindoos are sworn on the water of the Ganges, and Mahomedans on the Koran.

(signed) *H. F.*

"I, *A. B.*, do swear that I will duly administer justice according to the articles of war, without partiality, favour, or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases, and that I will not divulge the sentence of the court until it shall be approved of, or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court martial in due course of law."

The following oath shall then be administered by the interpreter to the Judge-advocate or superintending officer :—

Oath to be taken by Judge-advocate and superintending officer.

"I, *A. B.*, do swear that I will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof by a court of justice or a court martial in due course of law.

"So help me God."

Provided that it shall not be necessary to re-administer these oaths on the commencement of fresh trials before the same court.

Summoning of witnesses; persons not amenable to military authority, how summoned.

Art. 62. In all cases where persons required as witnesses before a court martial may not be amenable to these articles, the Judge-advocate or commanding officer shall transmit to the magistrate within whose jurisdiction the witness may reside, his summons for the attendance of such person, and the magistrate shall cause the witness to be duly summoned.

Witnesses to be examined on oath or solemn declaration.

Art. 63. All persons who give evidence at a court martial are to be examined on oath, according to the forms of their respective religions, or if they shall object, on the ground of any religious scruple, to take an oath, they may, at the discretion of the court, be permitted to make their solemn affirmation or declaration in such manner as is hereinafter mentioned.

Hindoos exempted from taking an oath to subscribe a declaration.

Art. 64. In the case of a witness of the Hindoo persuasion being exempted from taking an oath, the following declaration shall be subscribed by him previously to his deposition :—

Declaration.

"I will faithfully answer, according to the truth, such questions as may be put to me by the court, in the cause now before the court; I will not declare anything not warranted by the truth; if I declare anything not warranted by the truth, I shall be deserving of punishment from Ishwar."

Mussulmans exempted from taking an oath to subscribe a declaration.

And in the case of a Mussulman witness so exempted, the following declaration shall be subscribed by him previously to his deposition :—

Declaration.

"I sincerely promise, and solemnly declare, in the presence of Almighty God, that I will faithfully and without partiality answer, according to the truth, any questions that may be put to me by the court respecting the cause now before the court."

After the witness, whether Hindoo or Mussulman, has given his deposition, he is to subscribe the following declaration :—

Declaration.

"I solemnly declare, in the presence of Almighty God, that I have faithfully and without partiality answered, according to the truth, the questions put to me by the court respecting the cause now before the court."

Manner of voting; members in voting to begin with the youngest, &c.

Art. 65. All the members of a court martial are to preserve order, and in giving their votes are to begin with the youngest; and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of members present, provided the number of members present be not less than that required by the preceding articles; but in case of an equality of votes, the decision shall be in favour of the prisoner. The president at a general court martial shall vote with the other members, but shall have no casting vote. The European superintending officer at a court martial, inferior to general, shall not vote.

Equality of votes. Casting vote.

He never does so, and the negative is superfluous. (signed) *H. Fane.*

Concurrence of two-thirds of the members in a sentence of death.

Art. 66. No sentence of death shall be given against any offender by a court martial unless two-thirds of the members present concur therein.

Officers, non-commissioned officers, and soldiers, may be placed in arrest or confined preparatory to trial.

Art. 67. Whenever any officer, non-commissioned officer, or soldier, shall be charged with the commission of a crime deserving punishment, his commanding officer, if he is of opinion that there are reasonable grounds for inquiry, shall order him to be put under arrest; if an officer, or if a soldier, to be confined until he shall be either tried by a court martial, or shall be lawfully discharged by a proper authority; and a court martial for the trial shall be assembled within eight days, or if it cannot be conveniently assembled within that time, then as soon as it can be conveniently assembled.

Peculiar jurisdiction of general courts martial; commissioned officers amenable to general courts martial only.

Art. 68. All commissioned officers, all prisoners charged with offences which are punishable with death, or with transportation, or with imprisonment exceeding four months, shall be tried by general courts martial only.

Offences of which the punishment may be death or transportation, or imprisonment exceeding four months, or punishments in the next articles.

Powers of punishment vested in general courts martial.

Art. 69. A general court martial, when a commissioned officer shall be convicted before it, of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjuge such officer to be suspended from rank, and pay, and allowances, for a stated period, or to be placed lower on the list of his rank by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service; and the court shall, in every such sentence, specify the extent or degree of suspension or reduction which they shall so adjudge.

The reference here to "the next article," appears an error, as in the next article the punishments of imprisonment, hard labour, and solitary confinement, are not mentioned. I do not think that the punishment of "hard labour" ought to stand as a punishment generally applicable to commissioned officers. It is our duty to uphold the respectability of native officers. (signed) *H. Fane.*

A general court-martial may, in such cases, adjudge a commissioned officer to be punished as in the next article, by imprisonment, hard labour, and solitary confinement.

Powers of punishment vested in all courts martial; non-commissioned officers punished with loss of rank, &c.

I should desire to correct this, though it was in the original draft. The dishonour of the reduction deprives the man punished of the respect which is necessary from the soldiers to enable him to conduct with any advantage the duties of inferior grade. (signed) *H. Fane.*

Art. 70. Any court martial, general or not general, when a non-commissioned officer or soldier shall be convicted before it of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjudge such non-commissioned officer to be reduced to serve as a private soldier, or may adjudge a havildar to be reduced to the rank of naick, or may adjudge a non-commissioned officer or soldier to be placed lower in the list of the rank which he holds, with proportionate loss in respect to length of service; such loss to be distinctly specified in the sentence, and to be restorable by the Commander-in-chief.

Imprisonment awardable.

Art. 71. Or may adjudge such non-commissioned officer or soldier to be imprisoned for any period not exceeding four months, or to be imprisoned with hard labour for any period not exceeding two months, and may direct the prisoners to be kept in solitary confinement for any portion or portions of his term of imprisonment not exceeding one month at a time; and in addition to any such punishments, may adjudge a forfeiture of all claim to pension on discharge, which might otherwise have accrued to such non-commissioned officer or soldier from the length or nature of his service. Provided that no soldier who has undergone the punishment of imprisonment with hard labour, under the sentence of any court martial, shall be capable of being re-admitted into the ranks, or receiving pension on discharge.

Corporal punishment not to be awarded.

Art. 72. It shall not be competent to any court martial to sentence any non-commissioned officer, soldier, or camp follower, to be flogged.

I am at a loss to know how camp followers, such as camel drivers, and various other descriptions of men attending camps, on service especially, are to be kept in order, or restrained from pillage or injury to the inhabitants, when corporal punishments are entirely abolished. The dismissal, for the sepoy, may prove sufficient by the loss it inflicts on him; but not so of any camp follower. (signed) *H. Fane.*

No person to be tried a second time for same offence.

Art. 73. No person being acquitted or convicted before a court martial of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence.

Art. 74. No

Art. 74. No person shall be liable to be tried or punished for any offence against these rules and articles, which shall appear to have been committed more than three years previous to the order directing the assembly of the court martial whereby he is to be tried, unless the person accused, by reason of his absenting himself or some other manifest impediment, shall not have been amenable to justice within the period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall have ceased.

Limitation of liability to trial.

Art. 75. No non-commissioned officer shall be reduced to the ranks but by the sentence of a court martial.

Non-commissioned officers, how to be reduced.

Punishments otherwise than by Courts Martial.

Art. 76. In cases of slight offences a commanding officer may, without the intervention of a court martial, award extra drill or extra duty, not exceeding 15 days, or confinement in the quarter-guard for not exceeding three days; and none of these descriptions of punishment shall be awarded by sentence of a court martial.

Jurisdiction of commanding officer: without a court martial, may award drill or extra duty, or confinement in the quarter-guard. Court martial precluded from awarding such sentences.

Of Complaints.

Art. 77. If any officer, non-commissioned officer, or soldier, shall think himself wronged by his superior or other officer, he is to complain thereof to the commanding officer of his troop or company, by whom, if the grievance be not redressed, such officer, non-commissioned officer, or soldier, may complain to the commanding officer of his regiment, who is hereby required to examine into such complaint, or remit it to superior authority, as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished by the sentence of a court martial, according to the circumstances of the case, by being reduced in rank, or suspended from rank, or by being imprisoned or deprived of pay and allowances, according to the manner and to the extent as by these articles may be awarded by any court martial.

An officer, non-commissioned officer, or soldier, considering himself wronged by his superior, may complain to his commanding officer.

Allowances under Arrest.

Art. 78. Any commissioned officer, non-commissioned officer, or soldier, under arrest, or in confinement under a charge of any offence, shall not be entitled to receive his full pay and allowances from the day of his commitment till the day of his return to duty in his regiment, or to the party he shall be ordered to join, but shall be subsisted at a rate proportioned to his rank; and if he be acquitted he shall receive the balance of all arrears of pay and allowances accruing during the time of his confinement.

Commissioned, non-commissioned officer, or soldier, confined on a criminal charge, not entitled to full pay, &c. during his absence from his regiment, &c.

Execution of Sentences by Courts Martial.

Art. 79. Sentence of death shall be executed in like manner as such sentence is executed when awarded by courts martial for the trial of the East India Company's European troops. Whenever the sentence of a general court martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, the Nizamut Adawlut shall give effect to such sentence or commuted sentence, on the sentence being certified to the court by the adjutant-general or his deputy, under the authority of the Commander-in-chief.

Sentence of death.

Nizamut Adawlut to give effect to sentences of transportation.

Art. 80. Persons sentenced to imprisonment by courts martial, shall be imprisoned in any public prison, or in any other fit place which the Commander-in-chief at the presidency to which the prisoner may belong shall appoint, provided such place be within such presidency.

Imprisonment.

Art. 81. Whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour or with solitary confinement, or both, it shall be the duty of any magistrate to give force to such sentences on the offender sentenced to imprisonment being delivered to his custody, and on being furnished with a copy of the sentence by the General or other officer commanding the division or district within which the trial is held.

Magistrates to give effect to sentences of imprisonment by military authority.

Art. 82. In every case wherein a fine or pecuniary compensation shall be adjudged by a court martial, any arrears of pay or public money due to the offender, or any property belonging to him in camp, garrison, or cantonment, shall be available under

When a fine is adjudged by a court martial, the pay or property, &c. of the offender within camp, &c. shall be available.

What is intended by the commanding officer's authority being sufficient in the first case, and the president of the court martial's necessary in the second?

(signed) *H. F.*

under an order from the officer commanding, for the payment of the amount so adjudged; and the goods and chattels of the offender may be distrained on, and the distress sold by warrant under the hand of the president of the court martial.

Section IV.

Effects of the Dead.

Effects of deceased commissioned officers, non-commissioned officers, soldiers, and public servants.

Art. 83. When any commissioned officer, non-commissioned officer, or soldier, or any person receiving public pay drawn by any officer in charge of a public department belonging to the army may die, or be killed in the service, the commanding officer of the regiment or party, or officer in charge of the department, shall secure his effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the adjutant or officer in charge of the department.

Rules to be observed in the disposal of the effects of the deceased, if no executor be on the spot.

Art. 84. If there be no executor on the spot appointed by the deceased, the effects are to be publicly sold, the commanding officer of the regiment or party, or officer in charge of the detachment, after discharging the debts of the deceased, viz. the expense of funeral ceremonies, his debts in camp or quarters, and regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or in failure of such, to the legal representative of the deceased, and in the event of no executor, heir, or other representative of the deceased attending and establishing his claim within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate is to be remitted to the general treasury at the presidency.

Section V.

Articles relative to Service out of the British Territories, Martial Law, Rebels, Pay during Imprisonment by the Enemy, Effects of Deserters.

When troops are serving where there is no court of civil judicature, serious offences may be tried by general court martial.

Art. 85. Whenever any body of the troops shall be employed where there is no British court of civil judicature, any officer, soldier, or other person amenable to military law, accused of murder, robbery, or other serious offences against person or property, shall be liable to be tried by a general court martial, and punished with death or otherwise, according to law.

General court martial may be assembled for the trial of any person accused of any crime committed against the property, &c. of an inhabitant of any place out of the British territories where the troops shall be in military possession.

Art. 86. In any place out of the British territories, or in states in alliance with the British government where the troops shall be in military possession, the officer commanding any division, detachment, or distinct party, may assemble general court martial, which shall consist of not less than seven officers at the least, for the trial of any person under his command accused of any crime committed against the property or person of any inhabitant or resident at such place, or of having committed violence or any other offence; and every such court martial shall have power to adjudge any person so accused to suffer the punishment herein prescribed for the crime or offence charged, but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party, shall belong.

General court martial may be assembled for the trial of persons owing allegiance to the British government, who may be taken in arms against the said government, &c.

Art. 87. And in all places within the Company's territories, where martial law shall have been by due authority proclaimed, the officer commanding the division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers, for the trial of any person owing allegiance to the British government, who may be taken in arms against the said government, or who may be assisting in rebellion by maliciously attacking or injuring the persons or properties of any loyal subject, or in any other manner; and it shall be lawful for any such court martial to adjudge any person so found guilty to suffer death by being hanged by the neck until dead, or to be otherwise punished as to such court martial shall seem expedient, but no sentence shall be executed until confirmed by the said commanding officer.

And the commanding officer of every such division, detachment, or distinct party, is hereby authorised to arrest and detain in custody all persons engaged in such rebellion, or suspected thereof, and to cause all persons so arrested and detained to be brought to trial, and to execute the sentence of all such courts martial,

martial, whether of death or otherwise, and to do all other acts necessary for such several purposes.

Art. 88. Every court martial, as constituted in the preceding article, shall have power to try any person owing allegiance to the British government, who shall be taken in arms against the state, or otherwise aiding and abetting the enemy; and such person so found guilty shall be liable to the punishment of death, by being hanged by the neck until dead, or to transportation for life; but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party, shall belong.

Persons aiding, &c. the enemy, amenable to court martial, and liable to suffer death.

Sentence not to be executed until confirmed by the officer commanding.

Art. 89. Any officer, non-commissioned officer, or soldier, who shall be taken prisoner by the enemy, shall forfeit all claim to pay and allowances during the period of his remaining a prisoner, and until he shall again return to the service, when, if he can establish before a court martial that he was unavoidably taken prisoner in the course of service, and that he hath not served with or assisted the enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole, or such portion of his arrears of pay and allowances, as the court martial shall award.

Any officer, non-commissioned officer, or soldier, made prisoner, to forfeit all claim to pay and allowances, &c.

Art. 90. The effects of deserters are to be publicly sold, and the proceeds, after payment of regimental debts, remitted by the officer commanding the corps to which the deserter belongs to the general treasury at the presidency.

Effects of deserters.

Section VI.

Application of the Articles.

Art. 91. All officers, non-commissioned officers, soldiers, or any other persons whatsoever receiving pay, or being hired in the service of the artillery, whether drivers or others, all farriers, trumpeters, and drummers, all hospital attendants, sub-assistant surgeons and dressers, all artificers and labourers, followers, or others serving with the army, are to be governed by these articles, and subject to trial by courts martial.

I am not aware why the "artillery" is particularised. The article ought to be applicable to all followers. Perhaps the words "or others serving with the army," are intended to have that effect; but if so, why the first specification? signed) *H. F.*

Art. 92. All persons of the description mentioned in the last article, professing the Christian religion, are to be governed by these articles, save that in the trials of such persons by courts martial, the usage of the presidency to which they belong touching the constitution of the court martial shall continue to be followed.

Why this restriction?

See the letter from the secretary to government, Military Department, 31st of May 1838, paragraph 26.
(signed) *H. F.*

Section VII.

Promulgation of the Articles.

Art. 93. These articles are to be translated into the several languages of the different presidencies; and the parts following, viz.
are to be read at every *general muster at the head of every regiment.

* Suggested by Colonel Morison.

Minute by the Honourable *A. Amos*, Esq.

Legis. Cons. 19th Nov. 1838. No. 7.

The articles of war which I have prepared have been framed upon a view of the draft submitted by the Commander-in-chief, the observations of the Law Commissioners, the Resolutions of Council, and the opinions of the Governor-general, together with some alterations which have occurred to myself.

I shall not in the ensuing pages notice those alterations in the original draft which I have made in conformity with the joint opinions of the Governor-general and the Council. I have adopted the form of the articles as presented in the original draft, and which the Governor-general approves of, though the Council and the Law Commissioners would have preferred a different form.

I have not included the provisions respecting courts of request. The Council and the Law Commissioners have expressed a decided opinion against their being included. I collect from the observations of the Governor-general, that articles of war are expected from England for the government of the Company's European troops,

No. II.—Part 1.
Articles of War.

troops. It may be expected that they will follow the order of the English articles of war, and consequently will not contain any articles concerning courts of request. Thus, in addition to the reasons already assigned, uniformity will be observed by making courts of request the subject of a separate law. Another argument which may be entitled to consideration is, that courts of request affect civilians as plaintiffs, who are precluded from redress elsewhere. If, after further consideration, it be thought best to include courts of request, it is only adding a chapter; it will not disarrange the form of the articles as now drawn.

Section I.—*On Enlisting and Discharges.*

Art. 1. I presume it is not intended to enlist any soldier who will not take an oath.

The terms "regiment and corps" were used probably without any intentional difference.

Art. 3. In the original article a dismissal was not to include loss of pension, a discharge was to include it. I presume no pension is payable to the officer. The expression, "the government," was not sufficiently technical.

I do not know what power of discharge or dismissal is to be given to the local government in the Straits. I doubt whether the articles have been sufficiently examined with reference to their application to the Straits.

The distinction in the terms "dismissal" and "discharge," sounds invidious; but I presume that it is according to military usage.

Section II.—*Crimes and Punishment.*

Death and Transportation.

Art. 19. The particular provision as to solitary confinement is now introduced into all English statutes.

The power to "transport" was too vague in the original draft.

Imprisonment for Three Years.

Art. 20. I have altered this article in conformity with the views of the Commissioners, the Council, and the Governor-general, who have followed the proposed draft of the code. I cannot help thinking, however, that there may be a broad distinction between this species of military embezzlement and the kind of embezzlement provided against in the code. I must own that I think there is not sufficient reason for violating uniformity by a deviation from the 18th article of the Victoria Articles of War, which allows of transportation for life, or for years generally, or other punishments.

I presume the offence included in the corresponding English article, of "wilfully suffering to be spoiled," is intentionally omitted.

Crimes subject to punishments hereafter vested in courts martial.

Art. 21, &c. The offences which immediately follow seem to require a particular heading, the punishment being the same in all, and different from that in the preceding articles.

I do not discover any reason why, in offences which are the subject of the preceding articles, the general powers of punishment, as loss of rank, forfeiture of pension, &c. vested in courts martial, should not at discretion be applicable, where it is not thought proper to transport.

Art. 26. This article stood No. 39 in the original draft; I do not see any reason why it was postponed. The punishment accords with the punishments in this place, and the subject treated of in the adjacent sections is that of illegal absence.

Art. 31. I doubt whether the punishment, as it originally stood, was sufficiently defined by reference to subsequent articles; at all events, it is an improvement to point to the identical articles which contain the punishment.

I think it was left obscure whether, if a general court martial tried the offender, it could award imprisonment for four months under Art. 71.

Art. 32, &c. These offences require a distinct heading on account of the peculiarity of the punishment; viz. in an officer, dismissal simply, in a non-commissioned officer or soldier, punishment as by subsequent articles.

Art. 38. The punishment for this offence is different from any preceding punishment.

Art. 39, &c. The offences which immediately follow require a sentence different from any which has preceded.

Art. 40, &c. The crimes which immediately follow are attended with a sentence different from any in the preceding articles. The classing of them together enables us to avoid repetitions at the close of Articles 40 and 41 in the original draft.

Art. 45. The punishment is different from that in any preceding article, and therefore a new heading is inserted.

Art. 46. Ditto.

Art. 47, &c. The punishments in the next four articles are peculiar to the respective articles. They lay dispersed in the original draft; some of them, indeed, were introduced after the subject of punishments had been disposed of. They appear to have a connecting link of practical utility; viz. that of being "incident to courts martial."

Art. 47. The fine was before unlimited; it may be questioned whether four months' imprisonment, with hard labour and solitary confinement, as permitted by the articles referred to, be not too large a discretion.

Art. 48. I do not feel quite satisfied with the punishment in cases of perjury; viz. imprisonment of three years for an officer, and four months for a person of inferior station. It is to be observed, that the perjury may be upon a capital charge. I do not collect that perjury is punishable by military law under the English articles.

Art. 49. It is to be considered whether the expression "any person not military" as approved of, will answer our purpose; suppose the person refusing to attend be a European officer or soldier?

Art. 50. There is much difference of opinion upon this clause. I think there are strong grounds for maintaining the analogy of all other courts. It being considered incident to courts of justice to punish contempts to itself, and it being a common saying, that one court cannot judge of what is a contempt to another. There would be great practical difficulty, if any other court were to deal with such contempts. It will be prudent, however, to limit the extreme punishment.

Observations on the preceding Section (Section II.) *on Crimes and Punishments.*

Now that the offences have been arranged under specific heads, which have been determined, except in the last instance (offences incident to courts martial), by the nature of the punishment, perhaps it will appear (what was not so evident before) that, in several instances, the punishment is unnecessarily varied, the shades of variation being sometimes very slight, and, to first appearance, at least, capricious. Perhaps, on reconsideration, the Military Department may think it advisable to class all offences under three, or at most, four heads of punishment, each head admitting of adequate discretion and choice.

It appears to me that whilst the punishments of death, transportation, dismissal, imprisonment, fine, should be specifically appropriated, either separately or conjunctively, to specific offences, all other military punishments should be applicable at discretion to all offences. *Ex. gr.*, at present a person giving false alarms in time of war cannot be punished with loss of rank.

It may, perhaps, appear to be an inconvenient arrangement to conclude the section of crimes and punishments, whilst the statement of much the largest portions of the punishments is postponed by reference to subsequent articles. It may be thought advisable to conclude the section upon crimes and punishments with articles to this effect (having prepared the way for them by concluding such of the preceding articles as now refer to the court martial clauses accordingly): "Whereas reference is made in the preceding articles to certain discretionary punishments to be thereafter defined, such discretionary punishments are as follow." (Here insert the substance of the punishments which courts martial are now empowered to inflict under Section IV.)

The Judge-advocate will probably compare the list of crimes and punishments contained in these articles with that in the new articles of Queen Victoria, in case it be thought desirable that they should correspond more closely than they do at present.

I have kept, in Article 37, the terms of the original draft; for I presume that the offence of acting "in a manner unbecoming the character of an officer" conveys a distinct military meaning. I have omitted Article 51 of the original draft as too vague, but if pressed by the Judge-advocate, it will be proper to reconsider it.

The English articles contain similar terms, and, perhaps, they may be considered essential by the military authorities. I have omitted Article 59 for the same reasons as Article 51, if it be not also objectionable on the ground of repetition. I have omitted Article 46, as thinking it included in Article 20 of the present draft. If I am wrong, the punishment, at least, ought to be in keeping with that provided by Article 20. I have omitted Article 67, as thinking the process tedious and unnecessary.

I have omitted clause 58 for a reason which may make it expedient to consult the Advocate-general. I have consulted the Chief Justice, and think that we cannot give the prerogative power of mitigation to the Commander-in-chief. I observe, however, that the power is given by Article 8, Reg. V. of 1827, of the Madras code.

It may be important to consider whether the Governor-general should not reserve the power of confirming sentences of death, when passed under Article 85, *infra*. He has this power as regards European troops by 4 Geo. 4, c. 81, s. 4. It may be questioned also, whether we should not insert in the articles the effect of section 14 of 4 Geo. 4, clause 81, enabling the Governor-general in Council, and Governor in Council to suspend courts martial. Colonel Morison thinks this power is even more necessary in the case of natives than that of Europeans.

Section IV.—*Courts Martial.*

Art. 51, &c. The articles respecting courts martial were very much confined in the original draft. I have endeavoured to keep distinct the several heads of, 1. The Constitution of Courts Martial; 2. Procedure; and, 3. Powers of Punishment of Natives. I presume that general courts martial may not be composed, but if they are, they do not require a superintending officer. The Bombay code expressly provides for general native courts martial. Perhaps this point has not been sufficiently adverted to.*

52. Unless the words "in the judgment of the convening officer" were introduced, the legality of the court might depend in the fact of conveniency, to be tried by a jury.

53. As to the power of mitigation, and confirmation by the Governor-general, *vide supra*.

Attention is requested to the point, whether the reference should be to the Commander-in-chief of the presidency, or to the Commander-in-chief of the forces, or both, in this and other articles.

61. It is presumed that the judges and interpreter will take an oath.

There is, perhaps, some obscurity as to who is to tender the oath. By the original draft, I should have supposed that, in a general court martial, the Judge-advocate, and not the President, is to tender the oaths. If this be not intended, a slight alteration in the present draft will be necessary.

62. I do not see any good reason for the tedious process of summoning through the intervention of a magistrate. The provision as to enforcing obedience was too vague; non-attendance is provided for in Act 49.

63. I have adopted the views of the Governor-general in requiring an oath or solemn affirmation. Were it necessary, much argument could be urged in favour of those views. But the Governor-general does not advert to the question which had been discussed in Council as to the point, what option should be given of taking a solemn affirmation. I have followed the rule in 9 Geo. 4, c. 74, s. 36, as the safest.

64. It would seem to follow that none but Hindoos and Mahomedans were allowed to make solemn affirmation. If this rule be not sufficiently large in practice, a power should be given to the court of administering a solemn affirmation in such terms as they may think fit, according to 9 Geo. 4, c. 74.

65. I have

* Col. Morison observes, that "If there be no Judge-advocate to conduct the proceedings, there ought to be a superintending officer. Both cannot be required, and indeed the superintending officer, in cases of general courts martial, is usually appointed to act as 'Judge-advocate' for a trial, and gets a warrant as such from the Commander-in-chief.

"The Governor-general and Council do not interfere in sentences of death for crimes purely military. It is only for civil crimes permitted to be tried by courts martial under the Act of 1824, where confirmation of capital punishments or transportation for life is required.

"The Commander-in-chief may be a Company's officer. This, however, makes no difference; both officers having King's commissions.

"I should think this power even more necessary in the case of natives than Europeans."

65. I have adopted the suggestion of the Commissioners as to providing for a majority of members present, they being of the requisite number.

It is necessary to make provision as to a casting vote; I do not know if what I have added be conformable to military usage.

67. I think the commanding officer ought to have a discretion as to arresting.

I think that there was an ambiguity in the original articles as to the eight days.

68. The whole extent of the exclusive jurisdiction of general courts martial was not stated in the original draft. Perhaps this article is only a repetition of what is contained in preceding articles. The preceding articles might have been shortened by leaving out of them all statements as to whether the trial was to be by a general or by any court martial, but I did not like to make this alteration, as the repetition is of no great consequence, and may make the matter plainer.

69, 70, 71. These articles require very careful inspection, as they are referred to so frequently. Perhaps it was not clear before, that general courts had all the powers of punishment vested in inferior courts, besides those belonging exclusively to themselves. I presume, that sometimes a general court martial may be summoned for the trial of a person not an officer; and by reference to the section on crimes, that an officer ought to be liable to imprisonment in some cases not falling under the two first heads of punishment.

The latter part of clause 71 is borrowed from Art. 53 of the original draft.

76. Requires a distinct heading.

77. Ditto.

The punishment was left too indefinite.

78. Requires a new heading.

79. Ditto.

Perhaps something should be said as to execution of sentence by death.

The provisions in this and the following articles were dispersed.

80. The place of imprisonment was, perhaps, not properly provided for.

82. Perhaps the power of distress and sale may sometimes be useful.

Observations on Section III., *of Administration of Justice.*

I have omitted Art. 92, as containing repetitions and being unnecessary. Art. 53 has been omitted in conformity with the views of the Governor-general and Council. The latter part of that article has been incorporated. Art. 59 is omitted, because I think the substance is incorporated as far as relates to the place of imprisonment, and the forfeiture of pension on discharge. The rest of the article appears too vague; *vide supra.* Art. 67 is omitted, because thought unnecessary. Art. 77 is omitted, because included at the end of one of the articles in the section relating to punishments, viz. that relating to compensation.

Section V.—*Articles relating to Service out of the British Territories, &c.*

85. &c. The subjects of this section do not, perhaps, admit of any neat classification; but the present heading appears preferable to very vague heading in the original articles.

87. I have adopted the Governor-general's emendation.

88. The term of transportation required to be defined.

89. I have adhered to the original draft, and the views of the Governor-general.

Section VI.—*Application of the Articles.*

The heading of this section is taken from the new English articles of war. The subject of the section ought to be kept distinct, and placed either at the end or beginning of the articles. In the original draft there was no such distinct head, and moreover, the articles relating to the subject were so widely separated as to stand Nos. 87 and 99.

This section requires, perhaps, more consideration than any other contained in the articles. It will be convenient to consider, first, the points of law, and afterwards those of expediency. For, if particular views are taken of the legal points, the questions of expediency may not arise.

These articles are framed in pursuance of the 73d sect. of 3 & 4 Will. 4, c. 85, which empowers the Governor-general in Council to make articles of war "for the government of the native officers and soldiers in the military service of the

No. II.—Part 1.
Articles of War.

Company, and for the administration of justice by courts martial to be holden on such officers and soldiers." This clause is illustrated by the 96th sect. of 53 Geo. 3, c. 104, which states that doubts had arisen whether the local governments could make articles of war for such officers and soldiers.

One view of the subject which has been taken is, that articles of war and trials by courts martial proceed from prerogative powers, and that therefore we cannot legislate for such matters except under the express provision of the 73d sect. Another view is, that the doubts referred to in the 53 Geo. 3, most probably related to the point, whether the government of officers and soldiers was not matter of prerogative; but that if a person were not an officer or soldier, we might subject him to any court or species of law we pleased, which was not expressly forbid by the Charter Act.

According to the first of these views, it is obvious that the whole of Article 87 of the original draft is contrary to law, and it becomes immaterial to inquire into the questions of expediency connected with that article.

I think, however, we may adopt the latter view of the subject, particularly as it has been adopted in Reg. V. of 1827, Sect. 12, Art. 11, of the Madras code, framed with reference to the 53d of Geo. 3; and also in Bombay code, Reg. XXII. of 1827. Such also appears to have been the understanding in Bengal, though the articles at present in use in that presidency are of an ancient date.

Adopting this latter view, it is to be observed, that perhaps few of the articles apply to the delinquencies of camp followers in general. These delinquencies seem to be chiefly such as we adverted to in Reg. XX. of 1810, Sect. 2, Bengal code, c. 9, breach of local regulations in cantonments. I do not collect that it is intended to make delinquencies of this latter kind punishable by these articles.

But supposing that it is only intended to subject camp followers, &c. to the same articles as soldiers, a question of expediency arises, whether persons "gaining or seeking a livelihood in a military bazaar or cantonment" should be included as proposed in the original draft. Colonel Morison gives a strong opinion in the negative*.

The matter has undergone a great deal of discussion in the papers relative to military courts of request, and the opinion of the Advocate-general has been taken upon it with reference to the construction of the statute governing those courts.

As the matter has not been discussed with reference to these articles, I have adopted the description in Section 12, Article 11, of the Madras rules, which is in conformity with Colonel Morison's views, in order that the question may undergo consideration in the Military Department; the Bombay articles include such persons.

Another question of great importance arises upon Article 99 of the original draft, as to which the views of the framers of that draft of the Governor-general, and of the Council appear to differ.

Here, as in the former instance, I will first mention the legal points which occur.

I apprehend that we have no power to make articles of war for officers or soldiers who are not "natives." It is a more doubtful question whether (subject o the q u estion of our power to make articles for any persons besides officers and soldiers) the English articles for the Company's forces apply to drummers, camp followers, &c.; in short, to such as it is proposed to include in the present articles, but who are not strictly officers and soldiers. If those English articles do so apply, or rather if sect. 33 of 4 Geo. 4, c. 81, under the authority of which, I presume, the English articles are made, does so apply, we cannot make articles for drummers, camp followers, &c. unless they be "natives."

The Governor-general is desirous of having a trial by European officers of persons "of European birth or descent, and professing the Christian religion." I think we cannot legislate for officers or soldiers of European birth; whether every officer or soldier of European descent is "a native" in law, especially if his father be an Englishman, is a question, I think, of some difficulty. Whether we may

* Col. Morison observes, that the term "serving with the army," as used in the Mutiny Act, and as adopted in the 91st article of Mr. Amos's draft, means legally, "in the field," or on field service with the army; for it has been mentioned in the Supreme Court, that a cantonment is not with the army; which is then in a state of peace, and its laws applicable only to military crimes against military discipline. In deciding a case of false imprisonment of a sutler, at Secunderabad, it was ruled to be false imprisonment, which would not have been the case had it occurred in camp.

may legislate for camp followers, &c. not being strictly officers or soldiers, and not being "natives," is a question of considerable difficulty.

Such being the legal points, we will advert next to practice and expediency. Whether it be under regulation or by usage only, Colonel Morison says, "Natives,* who are Christians, are in Bengal tried by a European court martial; but not so at Madras or Bombay; and that to change the practice at Madras or Bombay would be a very dangerous innovation." I collect that the Governor-general would not make any distinction upon the ground of Christianity alone. On the whole, perhaps it is best, at the present juncture, to leave these matters as they stand at present.

(signed) *A. Amos.*

(No. 488.)

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general.

Legis. Cons. 19th Nov. 1838. No. 8.

Sir,

I AM directed by the Hon. the President in Council to forward to you, to be laid before the Right hon. the Governor-general of India, for consideration and such orders as may be necessary, the enclosed drafts of articles of war for the discipline of the native army, with a minute of Mr. Amos on the subject, and the papers noted in the margin.†

Legislative Dep.

2. You will be pleased to return all the original papers sent herewith, with your reply.

I have, &c.

Fort William, 20 August 1838.

(signed) *T. H. Maddock*, Off^g Sec^y to the Gov^t of India.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India.

Legis. Cons. 19th Nov. 1838 No. 9.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 488, dated the 20th August last, submitting for the consideration of the Right hon. the Governor-general drafts of articles of war for the discipline of the native armies of the three presidencies, together with the papers connected with the subject.

Legislative.

2. In reply, I am desired to transmit to you copies of the papers noted on the margin, and to express the Governor-general's hope that, should the Hon. the President in Council concur with him in opinion, no time may now be lost in finally publishing the articles of war with reference to his Lordship's notes and to the letter from the Judge Advocate-general, which the President in Council will perceive correspond nearly in their tenor, and entirely in their substance; his Lordship having, subsequently to the preparation of the notes, deemed it desirable to obtain the sentiments of his Excellency the Commander-in-chief on so important a matter.

Notes by the Governor-general, dated 21st September 1838.
Letter, No. 201, to the Judge Advocate-general, dated 25th September.
Letter, No. 252, from the Judge Advocate-general, dated 8th October.

3. The original enclosures received with your letter, under acknowledgement, are returned herewith.

I have, &c.

Simla, 23 October 1838.

(signed) *W. H. Macnaghten*, Sec^y to the Gov^t of India, with the Governor-general.

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* By "natives," Col. Morison means people of colour, born in India, as well as those who are altogether of native descent.

† Extract Military Department, dated 18th September 1837, with one enclosure.
Minute by the Governor-general, dated 27th January 1837.
Minute by Col. Morison, dated 4th April 1837, with one enclosure.
Minute by Mr. Shakespear, dated 19th January 1837.
To Officiating Secretary to the Indian Law Commission, dated 25th September 1837.
From Officiating Secretary to the Indian Law Commission, dated 12th January 1837.
From Officiating Secretary to the Indian Law Commission, dated 12th February 1838.
Minute by Mr. Shakespear, dated 26th February 1838.
Resolution, dated 26th February 1838.
Extract, Military Department, dated 9th July 1838.
Articles of War.
Revised Articles of War.
Minute by the Hon. A. Amos, Esq. without date.

No. II.—Part 1.
Articles of War.

Legis. Cons.
19th Nov. 1838.
No. 10.
Enclosure.

NOTES by the Governor-general on the Alterations suggested by the Hon. Mr. *Amos* in the Articles of War for the Native Armies of the Three Presidencies, which accompanied the Office Memorandum from the Legislative Department, under date the 13th instant.

1. IN the draft of articles of war prepared by Mr. Amos, the article respecting courts of request has been omitted, because he thinks that the new articles for the Company's European troops will probably "follow the order of the English articles of war, and consequently will not contain any articles concerning courts of requests." The existing regulations for European military courts of request are not, I believe, contained in the articles of war for the Company's European troops, but in the Mutiny Act, and the effect of the 57th section of the 4 Geo. 4, c. 81, is the same as if it were repeated in the articles thereunto annexed, and in the articles for the Queen's troops. Thus the Queen's troops were subject to the 2d, 3d, and 4th sections of the 4 Geo. 4. c. 81, several years before the 102d article was introduced into the articles for the Queen's troops; and the same reason that led to the introduction of that article should have induced the insertion of one corresponding to the 57th section of the 4 Geo. 4, c. 81. Whether, therefore, the new articles for the Company's European troops shall or shall not contain an article concerning courts of request, provided the substance of section 57 be not rejected from the new Mutiny Act, which there is not the least reason to expect, the analogy will be equally strong in favour of the retention of Article 84 of the original draft.

2. I approve of the arrangement and headings proposed by Mr. Amos, and as it is very desirable to avoid repetitions, I approve also of the omission of Articles 46, 67, 77, and 92 (though there are articles corresponding to 92 in the Queen's and Company's codes) of the original draft, and of Article 62 of Mr. Amos's draft.

3. Under Article 48, a soldier may be tried for perjury by a general or regimental court martial. In the former case he may be punished as severely as an officer can be punished.

4. The offence described in Article 50 of Mr. Amos's draft is generally committed by prisoners under trial, and imprisonment not exceeding three months would be very inadequate to extreme cases of outrage and insult.

5. I disapprove of all the changes by which it is proposed to deprive the Commander-in-chief of the power of mitigating and remitting punishments, a power which he holds by warrant, and which has invariably been exercised by every officer authorised to confirm the sentence of a general or inferior court martial.

6. Article 51 of the original draft, corresponding to Article 2 of Section 21 of the Act for the Company's European troops, and to Article 70 of those for the Queen's troops, cannot, in my opinion, be dispensed with.

7. I see no necessity for the introduction of articles corresponding to sections 4 and 14 of the 4 Geo. 4, c. 81. Before the latter section was enacted, the government of Madras (Sir George Barlow's) protected Lieut.-colonel Munro from trial by a court martial; and government would exercise a similar power in the cases of native officers and soldiers if occasion should occur, which has never yet happened, to require such interposition.

8. Article 92 of Mr. Amos's draft, referring to persons "of the description mentioned in the last article," does not include officers and soldiers of cavalry and infantry; and does not remove fully, even from the Bengal army, and not at all from the armies of Madras and Bombay, the anomaly, injustice, and indecorum noticed in the 26th paragraph of the Military Secretary's letter of the 31st May 1838, No. 175, to the address of the Officiating Secretary to the Military Department of government. The amended rule proposed in that paragraph has no tendency to excite, or bring into collision the religious feelings or conscientious scruples of Christians, Mahomedans, and Hindoos, but rather to withdraw existing grounds for the excitement of such feelings.

9. To read portions of the articles of war "at every general muster," that is, monthly, would be inconveniently frequent.

10. From the foregoing observations, it will be seen, that with the exception of the alterations alluded to in the second paragraph, and mere verbal improvements, I adhere to the original draft, as corrected according to the directions contained in the letter of the 31st May 1838 above referred to.

Simla, 21 September 1838. (signed) *Auckland.*

(No. 201.—Military Department.)

From Major-general Sir *William Casement*, K.C.B. Secretary to the Government of India, Military Department, with the Right honourable the Governor-general, to Major *C. Young*, Judge Advocate-general, Head-quarters, Simla.

Sir,

I HAVE the honour, by direction of the Right honourable the Governor-general, to transmit to you the accompanying original papers from the Legislative Department, with a request that you will lay the same before the Commander-in-chief, for such observations as his Excellency may feel disposed to offer, on the alterations proposed by the Honourable Mr. Amos, to be introduced into the articles of war under preparation for the native armies of the three presidencies.

2. You will be pleased to return the original documents when no longer required.

I am, &c.

Simla, 25 September 1838.

(signed) *Wm. Casement*, M. G.
Secy to the Govt of India, Military Department, with the Right hon. the Gov.-genl.

(No. 252.)

From the Judge Advocate-general to Major-general Sir *William Casement*, K.C.B. Secretary to the Government of India, Military Department, with the Right honourable the Governor-general.

Sir,

I AM directed by the Commander-in-chief to acknowledge the receipt of your letter, No. 201, of the 25th ultimo, transmitting original papers from the Legislative Department, and to submit the following observations by his Excellency on the alterations proposed by the Honourable Mr. Amos, to be introduced into the articles of war under preparation for the native armies of the three presidencies.

2. In the draft of articles of war prepared by Mr. Amos, the article respecting courts of request has been omitted, because he thinks that the new artices for the Company's European troops will probably "follow the order of the English articles of war, and consequently will not contain any articles concerning courts of request." His Excellency observes, that the existing regulations for European military courts of request are not contained in the articles of war for the Company's European troops, but in the Mutiny Act; and that the effect of the 57th section of the 4 Geo. 4, c. 81, is the same as if it were repeated in the articles thereunto annexed, and in the articles for the Queen's troops. Thus the Queen's troops were subject to the 2d, 3d, and 4th sections of that Act several years before the 102d article was introduced into the articles for the government of those troops, and the same reason that led to the introduction of that article, should have induced the insertion of one corresponding to the 57th sect. of the 4 Geo. 4, c. 81. Whether, therefore, the new articles for the Company's European troops shall, or shall not, contain an article concerning courts of request, provided the substance of sect. 57 be not rejected from the new Mutiny Act, which there is not the least reason to expect, the analogy will be equally strong in favour of the retention of Article 84 of the original draft. His Excellency does not, however, see any objection to the adoption of the alternative mentioned by Mr. Amos at the bottom of the first page of his Minute.

3. His Excellency does not admit the advantage of the references in Mr. Amos's headings to specific articles of war; but deems that leaving the reference general as in the original draft, and in the articles for Her Majesty's troops, is preferable; but as it is very desirable to avoid repetitions, he approves of the omission of articles 46, 67, 77, and 92 (though there are sections in the Queen's and Company's Mutiny Acts, viz. 4 and 35, corresponding to 92,) of the original draft, and of Article 62 of Mr. Amos's draft.

4. Under Article 48, a soldier may be tried for perjury by a general or regimental court martial. In the former case, the punishment may be as severe as can be awarded against an officer. The words "or any military court" should not be omitted, as including courts of request.

5. The offence described in Article 50 is generally committed by prisoners under trial, and imprisonment not exceeding three months would be very inadequate to extreme cases of outrage and insult.

6. His Excellency considers it his duty to express his entire dissent from all the changes by which it is proposed to deprive the Commander-in-chief of the power of mitigating and remitting punishments, a power which he holds by warrant, and which has invariably been exercised by every officer authorised to confirm the sentence of a general or inferior court martial. The power of commutation allowed by Article 58, (original draft) has also been exercised by his predecessors, and appears equally expedient.

7. Article 51 of the original draft, corresponding to Article 70 of the articles for the Queen's troops, and to Article 2 of Section 21 of those for the Company's European troops, cannot, in his Excellency's opinion, be dispensed with. In this and in other instances, the appearance of vagueness is sufficiently corrected by other articles, defining offences and specifying punishments, and by the custom of the service.

8. His Excellency sees no necessity for the introduction of articles corresponding to sections 4 and 14 of the 4 Geo. 4, c. 81. Before the latter section was enacted, the Governor in Council of Madras (Sir G. Barlow) protected Lieut.-colonel Munro from that by a court martial, and government would doubtless exercise similar power in the cases of native officers and soldiers if occasion should arise, which has never yet happened, to require such interposition.

9. Article 92 of Mr. Amos's draft, referring to persons "of the description mentioned in the last article," does not clearly include officers and soldiers of cavalry and infantry, and does not remove fully even from the Bengal army, and not at all from the armies of Madras and Bombay, the anomaly, injustice, and indecorum, noticed in the 26th paragraph of your letter, No. 175, of the 31st May last, to the address of the Officiating Secretary to the Military Department of government. The rule proposed in that paragraph has no tendency to excite, or bring into collision, the religious feelings, or conscientious scruples of Christians, Mahomedans, and Hindoos, but rather to withdraw existing grounds for the excitement of such feelings.

10. From the foregoing observations, and the notes appended to the margin of the fair copy of the articles as prepared by Mr. Amos, by his Excellency, it will be seen, that with the exception of the alterations referred to in the 3d paragraph, and verbal improvements and arrangements, his Excellency, with the exception of part of the Article 70 of Mr. Amos's draft, more approves of the original draft as corrected according to the directions contained in your letter, No. 175, of the 31st May 1838.

11. The original documents are herewith returned.

I have, &c.

Judge Advocate-general's Office,
Head-quarters, Simla,
8 October 1838.

(signed) *G. Young*,
Judge Advocate-general.

(True copies.)

(signed) *Wm. Casement*, M. G.
Secy to the Govt of India, Military Department,
with the Right hon. the Governor-general.

(True copies.)

(signed) *W. H. Macnaghten*,
Secy to the Govt of India, with the Gov.-genl.

MINUTE by the Honourable *A. Amos*, Esq. dated the 12th November 1838.

I PROPOSE to follow the suggestions of the Governor-general and Commander-in-chief, according to the order of the articles; the only preliminary matter which I think it necessary to notice relates to courts of request.

If, after what I am about to mention, the Governor-general and Commander-in-chief wish to have the 84th clause of the original draft included in the present articles, I, for my own part, should acquiesce; but it is to be observed, that there is a resolution of Government to codify the laws and rules touching courts of request for the three presidencies, as well for native as for European troops. It is only within the last week that we have received the voluminous papers sent by the Madras authorities upon this subject, and to make the requisite general code of law and procedure for courts military of request, will be a work of considerable labour and difficulty. The principal question is, whether the rules of the several presidencies as to courts of request should not remain until they can be carefully compared and examined; the effect of the 84th section of the original draft, is to make a general law for all the presidencies of a very superficial description, and before we have attended to all that has been written on the defects and advantages of the different rules existing at the different presidencies. There is another objection to the 84th section, to which it may be doubted if any conclusive answer has been given; that, according to precedent, rules for courts of request have always been provided for in some Act, and not in articles of war, for which there is a good reason, that they concern persons not military as well as military persons, and that they do not concern military persons in regard to acts done by them in a military capacity. Moreover, the Council, before I joined it, and the Law Commissioners were of opinion against including the 84th section of the original draft.

I now proceed to examine the suggestion respecting the articles in their order.

Art 3. In pursuance of the Commander-in-chief's suggestion, I have omitted the word "soldiers," thus not requiring a court martial for the discharge of private soldiers, and I have expressly authorised their discharge without a court martial.

Art. 31. In this and various other articles, the Commander-in-chief would leave the offender to be punished "according to the sentence of a general or other court martial," for which, indeed, there is a precedent in the English articles. I agree with the Law Commissioners that this is much too vague, and that in law as well as in reason. I have somewhat simplified the former terms which I used, and I think, that as I have provided in later clauses for specific punishments, which may be awarded by courts martial, where in the earlier clauses (as in this) the punishment is not defined, the present and like clauses are made, by references to and from the later clauses, sufficiently certain.

Art. 32. In this and subsequent articles I have made the headings to accord more with the views of the Commander-in-chief. This is mere matter of form. In altering the original draft I took pains to collect all offences together which were visited with the same punishment, and which were before much dispersed. I have now arranged all offences, except those incident to court martial, which are not capital, or punishable with transportation, under a general heading, which precedes Article 20. These offences have seven varieties *quoad* their punishment, and I had given a heading to each variety. I have not interfered with proposed punishments, or I should (perhaps in ignorance,) have been disposed to reduce them to two or three. The English articles have not so many varieties of punishment; but, though the English headings are not numerous, they are not a correct index to the cases contained under them. Those in the original draft would neither be correct or sufficiently descriptive. For instance, the heading which preceded Article 41 in the original draft, was quite as much applicable to Article 40 of the draft, coupled as that article must be in construction with Article 77 of that draft. I conceive that after this statement the Council will be willing to adopt such headings as the Commander-in-chief (if he thinks the matter of any importance,) may direct to be inserted in the draft, as rendering the matter plainer to military men.

Art. 38. The same observations occur as on Article 31. The Commander-in-chief, however, with deference, was in error, and not the draft; for the sentence on the officer was to be that of a general court martial, but the punishment might be

No. II.—Part 1.
Articles of War.

be what all courts martial could inflict, c. 9, imprisonment not exceeding four months.

Art. 47. I have inserted an article as a new article for No. 47, agreeably to the opinion of the Governor-general and Commander-in-chief; but I have made the punishment more specific than it was in the original draft, in Article 51 of that draft.

Art. 48. The question of military courts is before noticed; I have, however, introduced them here, as the provision may be useful, and the omission of the 84th article of the original draft is not definitively determined on.

Art. 49. I have altered the limit of punishment, and should advise such limit as the Commander-in-chief may approve of. I should advise all conceding the point of the tribunal, if pressed; but it is quite a legal anomaly for one court to punish the contempts of another court. I am sure that it would be attended with many inconveniences in practice. It is often very necessary, in order to preserve order in courts of law in England, to imprison for the rest of the day, or for 24 hours, or for the rest of the assizes, say three or four days, whilst a regular indictment as for a misdemeanor in a different court would be highly inconvenient, and the punishment would greatly exceed the offence. If the offence amounted to a riot, or, I should conceive, if it were so aggravated as to deserve even an imprisonment of three months, it would almost always be of a nature to be punishable by any civil tribunal without reference to these articles, as an offence against the general law of the country.

This article, I conceive, would only be required where the offence, though an interruption of the proceedings, was not of a very grave character, or was too indefinite to be punished by the civil courts. The inconvenience of the attendance before another tribunal would often be a greater evil than the offence committed.

Art. 56. I have taken out the words "shall consist of native officers." The Commander-in-chief, however, is mistaken in supposing the original draft changed. The original draft provides that general courts martial shall consist of a certain number of officers. But Article 72 of that draft provides that inferior courts martial shall consist of native officers. Article 63 of the original draft also speaks of native courts martial.

Art. 61. My doubt was, whether there might not be some sects who would not swear at all, either by the Koran or the Ganges.

Art. 69. I have omitted the punishment by hard labour for officers, in pursuance of the suggestion of the Commander-in-chief. The Commander-in-chief notices what was a clerical error, arising from the next article having been by mistake numbered in the middle, as though it were two articles. By a few words at the end of the new 70th Article I have avoided all reference to any other article.

Art. 71. I have altered this agreeably to the Commander-in-chief's opinion.

Art. 72. I have struck out the words "camp followers," but whether I should go further, and expressly subject them to be flogged, as in the original draft, I must crave advice. I do not collect whether the Governor-general is disposed to concede this point to the Commander-in-chief. For all I know, it may be very necessary to flog camp followers; and I think the prevailing sentiments against the punishment of flogging may not be altogether reasonable; I think, however, that the camp follower would be punishable under these articles with imprisonment, though the circumstances of the camp might not admit of its being solitary.

Art. 82. I have left Article 82 as it stood, but shall be happy to alter it as may be suggested to be most convenient. The warrant of distress should be issued by the court which sentences the offender, just as the order to make compensation. But the offender's means of making compensation by his pay or property in the camp, by which the order of the court is to be complied with, is perhaps more within the cognizance, and should be subjected more to the control of the offender's commanding officer.

Art. 86. I think the term "place," would receive such a latitude of construction as to obviate the objection pointed out in the pencil note.

Art. 91. Considering that we were here upon a matter of doubtful jurisdiction, I was desirous of adhering as closely as possible to the precedent of the Madras Regulations. It appears to me, from the observations of the Governor-general and Commander-in-chief upon this and the next article, it has been read as if this article only extended to officers and soldiers of artillery, and not of infantry or cavalry;

cavalry; but that could not have been meant in the Madras Code, nor do I think it the right construction of the article. I have endeavoured to clear it of ambiguity, and to generalize it more, in compliance with the suggestion of the Commander-in-chief. The provision in the original draft respecting persons in cantonments, was objected to by Colonel Morison, and I do not collect that it is now pressed.

Art. 92. The Governor-general objected to the original draft, and proposed a clause as follows:—

"Persons subject to these rules and articles, of European descent, and professing the Christian religion, shall be amenable to courts martial and courts of request, composed of European officers."

The article as it now stands was framed to meet Colonel Morison's views, who observed that the Governor-general's article would alter the practice of the Madras and Bombay armies, with respect especially to the trial of Christian drummers of European descent, and that such a change at the present moment would be very impolitic. This point will require the particular attention of the Council. It is one upon which I am incompetent to form an opinion myself.

Art. 93. I have altered this article according to the suggestion of the Commander-in-chief.

It remains only to consider whether we should alter Articles 52 and 54, in order to give the Commander-in-chief and commanding officer at each presidency power to remit and mitigate sentences.

It is very desirable he should have that power, and I think that probably the warrant which the Commander-in-chief has, might enable him to exercise that power though we did not confer it.

It appeared to me, in conference with the Chief Justice, that we could not confer such a power on the Commander-in-chief, any more than on the Governor and Council of India, in his executive capacity.

Considering the strong opinions expressed by the Governor-general and Commander-in-chief upon this subject, I think it advisable to consult the Advocate-general.

(signed) *A. Amos.*

(No. 454.)

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *J. Pearson*, Esq. Advocate-general.

Legis. Cons. 19th Nov. 1838. No. 12.

Sir,

Your opinion is requested by the President in Council upon the following points:— Legislative Dep.

The Governor in Council is now preparing articles of war for the native troops, under the provisions of 3 & 4 Will. 4, c. 85, s. 73.

He is desirous of being informed whether, in your opinion, in framing such articles, a power can be given to the Commander-in-chief to remit or mitigate the sentences of courts martial. It is his particular wish to do so, if it be practicable.

And whether such power can be given to the Commander-in-chief of each presidency.

The Commander-in-chief has a warrant from the Crown for the purpose of remitting and mitigating sentences, but the precise terms of such warrant are not known.

You are requested to consider whether the circumstance of this warrant will affect the preceding questions; and whether it would enable the Commander-in-chief to remit or mitigate sentences, although such power be not expressly conferred on him by the articles.

You are also requested to give your opinion, whether with reference to the terms of the 73d section, the Governor-general in Council has any power, by the articles of war, to subject camp followers, sutlers, and others attached to or serving with the army, not being officers or soldiers, to the jurisdiction of courts martial; also, whether such followers are, under the articles of war, to be viewed as liable to different rules when with the army in the field, and when attached to troops stationed in garrisons or cantonments.

No. II.—Part 1.
Articles of War.

On this subject I am directed to refer you to the 4 Geo. 4, c. 81, s. 8, containing articles of war for the Company's European troops, which is analagous to 9 Geo. 4, c. 74, s. 29.

As the Governor-general and the Commander-in-chief are particularly anxious that the articles of war should be published with the least possible delay, the President in Council will be obliged by your giving attention to the questions submitted, at your earliest convenience.

I have, &c.

Council Chamber,
12 Nov. 1838.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

From *John Pearson*, Esq. Advocate-general, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India.

Legis. Cons.
19th Nov. 1838.
No. 13.

Sir,

I HAVE the honour to acknowledge the receipt of your letter relative to articles of war intended to be passed for the native troops by the Governor-general in Council.

2. I have never seen the warrant granted by the Crown, and am of course unable to say whether it is applicable to the points referred to me, or what powers of remitting or mitigating sentences it confers upon the Commander-in-chief.

And with respect to the questions themselves which have been put to me, I would beg to observe that I am not aware of any decision having taken place; and of course I can only give that opinion or interpretation of the Act of Parliament which seems to me the most probable.

3. In this light, then, I am certainly inclined to think that the Governor-general in Council has, under the 73d section of the Act you refer to, the power to subject "camp followers, sutlers, and others attached to or serving with the army to the jurisdiction of courts martial." By the Annual Mutiny Act a power is given "to make articles of war for the better government of Her Majesty's forces," an expression as general or indefinite as that of the 3 & 4 Will. 4, which makes it "lawful for the Governor-general in Council to make articles of war for the government of soldiers in the military service of the Company." Yet in the articles under the Annual Mutiny Act, have been, and still are, included suttlers (Art. 119) and followers of the army (Art. 101).

4. As to the power of pardoning or mitigating sentences, and whether the Governor-general in Council can invest the Commander-in-chief with it, no doubt a great difficulty arises. It may be urged that the power of pardon is a part of the prerogative of the Crown, and that with that prerogative the local legislature of India are forbidden to interfere. Yet it is difficult to think that this prohibition extends to the pardoning of natives, when the pardoning or mitigating of their sentences by courts in the Mofussil has so long been practised. Thus, by 21 Geo. 3, c. 70, s. 23, and by 37 Geo. 3, c. 142, s. 8, the powers of the government of India to frame Regulations are recognised as very extensive. The former stating that "if not disallowed by the King within two years, they shall be of force and authority to direct the provincial courts." The latter admitting the power of the government to pass Regulations "affecting the rights, persons, and property of the natives and other individuals amenable to the provincial courts of justice." In conformity with these, Regulations have been made by the Governor-general in Council. For example, the Regulation XIV. of 1810 vests in the Nizamut Adawlut the power of pardoning or mitigating sentences, with certain reservations to the government. As this was not disallowed within two years, I conceive that the government in passing it was not thought to have exceeded its legitimate powers. Now in this respect I do not see a difference between that case and the case which is submitted to me; for I cannot suppose the Parliament of England meant to restrain the Legislative Council more strictly in the passing of laws, than the Governor-general in Council in the making of Regulations. Of course if the Governor-general in Council can give the right to remit or mitigate punishments to the Commander-in-chief, I think they must have the same power in the instance of the Commander-in-chief in the other presidencies.

I have, &c.

Fort William, 17 Nov. 1838.

(signed) *John Pearson*,
Advocate-general.

FORT WILLIAM, Legislative Department, the 19th November 1838.

THE following draft of proposed articles of war for the government of the native officers and soldiers in the military service of the Honourable the East India Company, and for the administration of justice by courts martial, read in Council for the first time on the 19th November 1838, and ordered to be published for general information.

Legis. Cons. 19th Nov. 1838. No. 14.

SECTION I.

Of Enlisting and Discharges.

Art. 1. Every recruit, prior to being enrolled in his regiment, shall have the articles of war relating to mutiny and desertion read and explained to him, after which the following declaration shall be made to him by the officer commanding, in front of the regiment, in presence of the native officers and soldiers:

Articles of war and declaration to be read, and oath to be administered to all recruits.

Declaration.

Declaration.

"In time of peace, after having served five years, on making application for your discharge through the commanding officer of your company, it will be granted you within three months from the date of your application, provided it will not cause the vacancies in your company to exceed 10, in which case you shall remain until that objection be removed; but in time of war you have no claim to a discharge, but shall remain and do your duty until the necessity of retaining you in the service shall cease."

The following oath shall then be required from him, according to the formss of his religion, in front of the colours:

Oath.

Oath.

"I, *A. B.*, inhabitant of village , pergunnah , subah , son of , do swear, that I will never forsake or abandon my colours [the word guns to be substituted for colours in swearing in artillery recruits]; that I will march wherever I am directed, whether within or beyond the Company's territories; that I will implicitly obey all the orders of my superior officers, and in every thing behave myself as becomes a good soldier and faithful servant of the state."

Art. 2. And when any recruit is enlisted for a regiment raised for general service, the following words shall be added to the declaration made to him previously to enrolment:

Recruits for general service.

"And you engage to embark on board ship, whenever the service shall require your proceeding by sea." [And the following words shall be added to the form of oath for all recruits for those regiments]: "And I do further swear, that I will readily embark on board ship, whenever the service shall require me to proceed by sea."

Art. 3. No commissioned officer shall be dismissed excepting by the sentence of a general court martial. No non-commissioned officer shall be discharged except by the sentence of a court martial. Soldiers may be discharged the service by order of the officer commanding-in-chief at the presidency to which they may belong, or by a sentence of a court martial. Every such dismissal or discharge shall include forfeiture of all claim to pension; provided that no sentence of discharge awarded by a court martial inferior to general shall be carried into effect without the concurrence of the general, or other officer commanding the division, district, or field force with which the prisoner may be serving; provided also, that the Governor-general in Council in his executive capacity, and the Governor in Council of any presidency to which a commissioned or non-commissioned officer or soldier may belong, shall have power to order his dismissal or discharge.

Commissioned officers, non-commissioned officers, and soldiers, by what authority to be dismissed the service.

Art. 4. All non-commissioned officers and soldiers discharged the service, shall be furnished by the commanding officer of the regiment with a discharge certificate, made out in the vernacular language of the individual discharged, with an English translation, expressing the authority for, or cause of, such discharge, and the period of their service in the regiment to which they may at the time belong.

Non-commissioned officers and soldiers to be furnished with a discharge certificate.

Art. 5. No non-commissioned officer or soldier shall enlist himself in any other regiment without a regular discharge from his former corps, under the penalty of being reputed a deserter, and suffering accordingly.

Penalty of enlisting in other regiments, &c. without a discharge from former regiment.

Section II.

Crimes and Punishments:

Crimes punishable with Death, Transportation, or Imprisonment.

Penalty of mutiny.

Art. 6. Any officer, non-commissioned officer, or soldier, who shall begin, excite, cause or join in, any mutiny or sedition in the regiment or corps to which he belongs, or in any other corps or regiment in the service, or serving as allies, on any pretence whatsoever, or who being present at any mutiny or sedition shall not use his utmost endeavours to suppress it, or who coming to the knowledge of any mutiny, intended mutiny, or concealed combination against the state, who shall not without delay give information thereof to his commanding officer; or,

Penalty of striking or drawing any weapon against a superior officer, &c.

Art. 7. Who shall strike his superior officer, or shall draw, or offer to draw, or lift up any weapon, or use or offer any violence against him, on any pretence whatever, or shall disobey any lawful command of his superior officer; or,

Penalty of desertion.

Art. 8. Who shall be guilty of desertion; or,

Penalty if a sentry be found sleeping on his post, or of quitting it before he is relieved in time of war or alarm.

Art. 9. Who, in time of war or alarm, shall be found sleeping upon his post, or shall leave it before regularly relieved; or,

Penalty of doing violence to any person who brings provisions to the camp or quarters, in time of war or alarm.

Art. 10. Who, in time of war or alarm, shall do violence to any person bringing provisions or other necessaries to the cantonment or camp of the troops employed; or shall force a safeguard; or,

Penalty of making known the watchword.

Art. 11. Who shall treacherously make known the watchword to any person not entitled to receive it, according to the rules and discipline of war; or,

Penalty of making false alarms in camp or quarters.

Art. 12. Who, in time of war, shall by discharging of fire-arms, drawing of swords, beating drums, making signals, using words, or by any means whatsoever, intentionally occasion false alarms in action, camp, garrison, or quarters; or,

Penalty of holding correspondence with, or giving intelligence to, the enemy.

Art. 13. Who shall be convicted of holding correspondence with or giving intelligence to the enemy, or any person in rebellion, either directly or indirectly, or coming to the knowledge of such correspondence shall not discover it immediately to his commanding officer; or,

Penalty of relieving or harbouring an enemy.

Art. 14. Who shall directly or indirectly assist or relieve the enemy, or persons in rebellion, with money, victuals, or ammunition, or shall knowingly harbour or protect an enemy or rebel; or,

Penalty of going in search of plunder.

Art. 15. Who shall leave his commanding officer, or his post, or company in time of action, or go in search of plunder; or.

Penalty of casting away arms or ammunition.

Art. 16. Who shall, in presence of an enemy, cast away his arms or ammunition; or,

Penalty of misbehaving before the enemy.

Art. 17. Who shall misbehave himself before the enemy, or use means to induce others so to misbehave; or,

Penalty of shamefully abandoning, &c. to the enemy any garrison, fortress, &c.

Art. 18. Who shall, shamefully abandon, or deliver up to the enemy, any garrison, fortress, post, or guard, committed to his charge, or which it was his duty to defend, or who shall use means to induce any other officer, non-commissioned officer, or soldier so to abandon, or deliver up any such garrison, fortress, post, or guard; or,

Penalty of treacherously suffering an enemy to escape.

Art. 19. Who shall treacherously release, wilfully aid, or connive at the escape of any enemy or rebel placed as a prisoner under his charge, shall suffer death, or transportation for life or any term of years, or imprisonment with or without hard labour for life, or for any term of years, as a general court martial shall award, together with solitary confinement for any portion or portions of the term of imprisonment, not exceeding one month at a time, or three months in the space of one year.

Crimes not Punishable with Death or Transportation.

Penalty of selling stores, &c. the property of government.

Art. 20. Any officer, non-commissioned officer, or soldier, who shall embezzle or fraudulently misapply any money entrusted to him on the public account, or for any military purpose, or any provisions, forage, arms, clothing, ammunition,

or

or military stores, of whatever kind or description, the property of government, entrusted to his charge; or who shall be concerned in, or connive at, any such embezzlement or fraudulent misapplication, shall, on conviction thereof before a general court martial, be dismissed the service, and fined to the extent of the loss or damage, and be further liable to suffer imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portion or portions of such term not exceeding one month at a time, or three months in the space of one year.

Penalty of persuading any one to desert.

Art. 21. Any officer, non-commissioned officer, or soldier, who shall be convicted of having advised or persuaded any other officer, non-commissioned officer, or soldier, to desert, or having connived at such desertion; or,

Penalty of not joining from leave without delay when corps is ordered on service.

Art. 22. Who, being on leave of absence, shall have received information from the head-quarters of his regiment, or from other competent authority, that his regiment has been ordered on service, and shall not rejoin without delay; or,

Penalty of taking a bribe for procuring leave, &c.

Art. 23. Who directly or indirectly shall require or accept a bribe, present, or gratification, on the pretence of procuring leave of absence, promotion, or any other advantage or indulgence for any officer, non-commissioned officer, or soldier; or,

Penalty of occasioning false alarms in time of peace.

Art. 24. Who, in time of peace, shall, by discharging fire-arms, drawing swords, beating drums, or by any other means whatever, occasion false alarms in camp, garrison, or quarters; or,

Penalty of being two miles from camp without leave.

Art. 25. Who shall be found two miles from the camp without leave; or,

Penalty of remaining at night out of camp or quarters.

Art. 26. Who shall be absent from his cantonment after tattoo, or from camp after retreat beating, without leave from his superior officer; or,

Penalty of not repairing at the time fixed to the parade, &c.

Art. 27. Who shall fail to repair at the time fixed to the parade or place appointed, if not prevented by sickness or some other sufficient cause; or,

Penalty of quitting company or troop without leave.

Art. 28. Who shall, without urgent necessity, or without leave of his superior officer, quit his company or troop; or,

Penalty of quitting guard or post without being relieved, &c.

Art. 29. Who shall quit his guard or post without being regularly dismissed or relieved; or,

Penalty of releasing a prisoner without orders, or suffering him to escape.

Art. 30. Who, being in command of a guard, shall refuse to receive any prisoner duly committed to his charge; or shall without proper authority release any prisoner; or shall suffer, through carelessness or neglect, any prisoner to escape; or,

Penalty of not seeing reparation done to persons ill-treated, &c.

Art. 31. Who, being in command at any post, or on the march, on complaint made to him of any person under his command beating or otherwise ill-treating any person, or extorting from him more than he is obliged to furnish by authority, or disturbing fairs or markets, or committing any kind of riot, shall not see reparation done to the party or parties injured, or if that be impracticable, shall not report the same to his superior officer, shall be punished by the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty for entertaining and not confining deserters.

Art. 32. Any officer, non-commissioned officer, or soldier, who shall knowingly enlist a deserter, or shall not after his being discovered immediately cause him to be confined, and give notice thereof to the nearest commissioned officer; or,

Penalty of drunkenness on duty.

Art. 33. Who shall be found drunk on duty; or,

Penalty of striking or doing violence to a sentry.

Art. 34. Who shall strike or do violence to a sentry; or,

Penalty of false returns or reports.

Art. 35. Who shall knowingly make a false return or report to any of his superior officers authorised to call for such return or report, of the state of the men under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, or of which he may otherwise have charge; or,

Penalty of false certificates, &c. to obtain pension, &c.

Art. 36. Who shall be convicted of obtaining, or attempting to obtain, for himself, any officer, or soldier, or for any other person whatsoever, any pension or allowance, by any false statement, certificate, or document, or by the omission of the true statement; or,

Penalty of disgraceful conduct of commissioned officers.

Art. 37. Who, being an officer, shall behave in a manner unbecoming the character of an officer, the fact or facts whereon the charge is grounded being clearly

clearly specified, shall, if an officer, on conviction thereof before a general court martial, be dismissed the service; and if a non-commissioned officer or soldier, shall, on conviction thereof, be punished according to the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty of breach of arrest.

Art. 38. Whatsoever officer under arrest shall leave his confinement before he is set at liberty by competent authority, shall, according to the sentence of a general court martial, be dismissed the service, or be punished in manner hereinafter mentioned.

Penalty of stealing from a comrade, &c.

Art. 39. Whatsoever non-commissioned officer or soldier shall be convicted of stealing money or goods, the property of a comrade, or of a military officer, or of committing any petty offence of a fraudulent nature, to the injury of, or with intent to injure, any person, civil or military, shall be punishable according to the sentence of any court martial, in manner hereinafter mentioned, and the property so fraudulently obtained shall be restored to the owner.

Penalty of committing any waste or spoil in towns, villages, gardens, &c.

Art. 40. Any officer, non-commissioned officer, or soldier, who shall, without orders, commit waste or plunder, either in towns or villages, gardens or fields, or shall injure or destroy the property, or shall do violence on the person of any of the inhabitants; or,

Penalty of extorting money, &c. as fees, duties, or on any pretence whatsoever.

Art. 41. Any commissioned officer commanding at any post, or on the march, who shall, on any pretence whatever, illegally, and against the will of the parties, extort money or other property, or services; or,

Penalty of a non-commissioned officer or soldier extorting, money, &c. as fees, on any pretence whatsoever.

Art. 42. Any non-commissioned officer or soldier at any post, or on the march, who shall extort money or property of any description, as fees or duties, or on any pretence whatever, or shall, without authority, exact from villagers or others, carriage, porterage, or provisions; or,

Penalty of selling or wasting ammunition delivered out.

Art. 43. Who shall sell, lose, or designedly or through neglect, waste the ammunition delivered out to him; or,

Penalty of spoiling, &c. horse, arms, &c.

Art. 44. Who shall sell, or designedly or through neglect, lose or injure his horse, or spoil his arms, clothes, accoutrements, or regimental necessaries, shall make compensation for the injury, loss, or damage sustained; and such loss, injury, or damage, shall, in the case of any non-commissioned officer or soldier, be made good by monthly stoppages, not exceeding half his pay and allowances, and shall be punishable according to the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty of being absent without leave, and of overstaying the period of leave.

Art. 45. Any officer, non-commissioned officer, or soldier, who shall absent himself without leave, or shall, without sufficient cause, overstay the period for which leave may have been granted him, shall forfeit his pay and allowances for the time he may have been so irregularly absent, and be further liable to be punished by the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty of malingering, &c.

Art. 46. Whatsoever commissioned officer, non-commissioned officer, or soldier, shall be convicted of feigning or producing disease or infirmity shall, if a commissioned officer, be dismissed the service, and if a non-commissioned officer or soldier, shall forfeit all claim to pension on discharge, in addition to such other punishment as may by any court martial be awarded.

Art. 47. All crimes not capital, and all disorders or neglects which officers, non-commissioned officers, or soldiers, may be guilty of, to the prejudice of good order and military discipline, though not specified in these rules and articles, are to be taken cognizance of by courts martial, and to be punished with any such punishments as courts martial are by these articles enabled to inflict, according to the nature and degree of the offence.

Crimes incident to Courts Martial.

Penalty of not attending when summoned as a witness before a court martial, or of refusing to be sworn.

Art. 48. Any person amenable to these articles of war, who, when duly summoned before a court martial, shall not attend, or shall refuse to be sworn, or to give evidence upon solemn affirmation or declaration as hereinafter is mentioned, shall be subjected to a fine not exceeding 1,000 rupees, and such punishments as any court martial is enabled to inflict, as hereinafter mentioned.

Art. 49. Whatsoever officer shall be found guilty, by a general court martial, of perjury, by wilfully and knowingly giving false evidence, on oath or solemn affirmation or declaration, on any trial before any other general or other court martial, or any military court, entitled to administer an oath, shall be dismissed the service, and be further subject by the sentence of a general court martial to fine to the amount of his arrears of pay and allowances, or imprisonment, which may extend to three years; and every non-commissioned officer or soldier so convicted shall be dismissed the service, and be liable to suffer such other punishment or punishments as any court martial may award under these articles.

Penalty of perjury.

Art. 50. Any person not amenable to these articles of war, having been upon any court martial as hereinafter mentioned, and summoned, refusing or neglecting to attend, or who, attending, shall give such testimony as, if given in a civil court, would render him guilty of perjury, shall be liable to trial in a civil court, and on conviction, shall suffer such penalties as may be in force against a person offending in like manner in any civil court.

How punished for not attending, or for perjury.

Art. 51. Any person using menacing words, signs, or gestures in the presence of a court martial then sitting, or causing any disorder or riot so as to disturb their proceedings, shall be punished, according to the nature and degree of his offence, by the judgment of the same court martial, with imprisonment for any term not exceeding six months.

Penalty of using menacing words, gestures &c. before a court martial.

Section III.

Administration of Justice.

Art. 52. The Commander-in-chief or commanding officer of the forces for the time being at the presidency to which the prisoner to be tried may belong, is empowered to convene courts martial for the trial and punishment of all offences specified in these articles, and to confirm the sentence passed by such courts, and to mitigate or remit the punishments awarded according to his discretion.

Courts martial, by whom convened; sentences confirmed or mitigated.

Art. 53. A general court martial shall not consist of less than 13 commissioned officers, unless it be held out of the Honourable Company's territories, where a general court martial may consist of five commissioned officers, if a greater number cannot, in the judgment of the convening officer, be conveniently assembled.

General courts martial, how constituted; not ordinarily to consist of less than 13 commissioned officers. When may consist of five.

Art. 54. No sentence of a general court martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-chief of the forces for the time being at the presidency to which the prisoner may belong, and until he shall have confirmed the same, and have signified his directions thereon.

No sentence to be put in execution until confirmed.

Art. 55. The commanding officer of every station, cantonment, garrison, detachment, or regiment, may assemble courts martial, not being general courts martial, according to the nature of his command, for the trial and punishment of all offences specified in these articles, where general courts martial have not exclusive jurisdiction. No sentence awarded by such courts martial shall be carried into effect until the commanding officer shall have confirmed it.

Courts martial not being general, by whom appointed.

Sentence to be confirmed by the commanding officer previous to execution.

Art. 56. No officer on detached command, of less than four companies, or detachments numerically equal to four companies, shall carry into execution any punishment awarded by a court martial held by his order, until the sentence shall have been confirmed by the officer commanding the regiment to which the offender belongs, except when an immediate example is necessary.

No officer commanding less than four companies to confirm the sentence of a court martial.

Art. 57. Courts martial, not being general, shall not consist of less than five commissioned officers, excepting where that number cannot conveniently be assembled, when three shall be sufficient, of whom the senior officer shall be president.

Courts martial not general, how constituted; not to consist of less than five officers ordinarily. Three, when sufficient.

Art. 58. At all general courts martial the senior officer shall sit as president without being so appointed by warrant.

Senior officer to preside at general courts martial.

Art. 59. At all courts martial inferior to general, an European officer of not less than five years' standing in the service, except in cases where no officer of that standing may be available, shall be appointed to conduct the proceedings.

At all inferior courts martial an European officer to superintend.

Art. 60. An interpreter, if practicable, shall be appointed to all courts martial.

Interpreter to be appointed.

Hours of sitting.

Art. 61. Trials by courts martial may be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

Forms of Proceeding.

Art. 62. On the assembly of the court the Judge-advocate or superintending European officer shall administer to the interpreter the following oath :—

Oath.

Oath to be taken by the interpreter.

" I, *A. B.*, swear that I will faithfully interpret and translate the proceedings of the court, and that I will not divulge the sentence until it shall have been approved or published ; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or court martial, in due course of law.

" So help me God."

In case of the unavoidable absence of an interpreter, the European superintending officer of a court martial inferior to general, shall take the oath prescribed for the interpreter. The Judge-advocate or superintending officer shall then cause the following declaration to be made by each member, on oath, according to the forms of his religion :—

Oath by members of the court.

" I, *A. B.*, do swear that I will duly administer justice according to the articles of war, without partiality, favour, or affection ; and if any doubt shall arise, then according to my conscience, the best of my understanding, and the custom of war in the like cases ; and that I will not divulge the sentence of the court until it shall be approved of or published ; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court martial, in due course of law."

The following oath shall then be administered by the interpreter to the Judge-advocate or superintending officer :—

Oath to be taken by Judge-advocate and superintending officer.

" I, *A. B.*, do swear that I will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof by a court of justice or a court martial, in due course of law.

" So help me God."

Provided that it shall not be necessary to re-administer these oaths on the commencement of fresh trials before the same court.

Summoning and Examination of Witnesses.

Persons not amenable to military authority, how summoned.

Art. 63. In all cases where persons required as witnesses before a court martial may not be amenable to these articles, the Judge-advocate or commanding officer shall transmit to the magistrate within whose jurisdiction the witness may reside his summons for the attendance of such person, and the magistrate shall cause the witness to be duly summoned.

Witnesses to be examined on oath or solemn declaration.

Art. 64. All persons who give evidence at a court martial are to be examined on oath, according to the forms of their respective religions, or if they shall object on the ground of any religious scruple to take an oath, they may, at the discretion of the court, be permitted to make their solemn affirmation or declaration, in such manner as is hereinafter mentioned.

Hindoos exempted from taking an oath to subscribe a declaration.

Art. 65. In the case of a witness of the Hindoo persuasion being exempted from taking an oath, the following declaration shall be subscribed by him previously to his deposition :—

Declaration.

" I will faithfully answer according to the truth such questions as may be put to me by the court in the cause now before the court ; I will not declare anything not warranted by the truth. If I declare anything not warranted by the truth, I shall be deserving of punishment from Ishwar."

And

And in the case of a Mussulman witness so exempted, the following declaration shall be subscribed by him previously to his deposition:— Mussulmans exempted from taking an oath to subscribe a declaration.

"I sincerely promise and solemnly declare, in the presence of Almighty God, that I will faithfully, and without partiality, answer according to the truth any questions that may be put to me by the court respecting the cause now before the court." Declaration.

After the witness, whether Hindoo or Mussulman, has given his deposition, he is to subscribe the following declaration:—

"I solemnly declare, in the presence of Almighty God, that I have faithfully, and without partiality, answered according to the truth the questions put to me by the court respecting the cause now before the court." Declaration.

Manner of Voting.

Art. 66. All the members of a court martial are to preserve order, and in giving their votes are to begin with the youngest, and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of members present, provided the number of members present be not less than that required by the preceding articles; but in case of an equality of votes, the decision shall be in favour of the prisoner. The president at a general court martial shall vote with the other members, but shall have no casting vote. The European superintending officer at a court martial inferior to general shall not vote. Members in voting to begin with the youngest, &c. Equality of votes. Casting vote.

Art. 67. No sentence of death shall be given against any offender by a court martial, unless two-thirds of the members present concur therein. Concurrence of two-thirds of the members in a sentence of death.

Art. 68. Whenever any officer, non-commissioned officer, or soldier, shall be charged with the commission of a crime deserving punishment, his commanding officer, if he is of opinion that there are reasonable grounds for inquiry, shall order him to be put under arrest, if an officer; or if a soldier, to be confined, until he shall be either tried by a court martial or shall be lawfully discharged by a proper authority; and a court martial for the trial shall be assembled within eight days, or if it cannot be conveniently assembled within that time, then as soon as it can be conveniently assembled. Officers, non-commissioned officers, and soldiers, may be placed in arrest or confined, preparatory to trial.

Peculiar Jurisdiction of General Courts Martial.

Art. 69. All commissioned officers, all prisoners charged with offences which are punishable with death, or with transportation, or with imprisonment exceeding four months, shall be tried by general courts martial only. Commissioned officers amenable to general courts martial only; offences of which the punishment may be death or imprisonment exceeding four months, or punishments in the next articles.

Art. 70. A general court martial, when a commissioned officer shall be convicted before it of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjudge such officer to be suspended from rank, and pay, and allowances, for a stated period; or to be placed lower on the list of his rank by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service; and the court shall in every such sentence specify the extent or degree of suspension or reduction which they shall so adjudge. A general court martial may, in the cases before mentioned, adjudge a commissioned officer to be punished with imprisonment for any period not exceeding four months. Powers of punishment vested in general courts martial.

Art. 71. Any court martial, general or not general, when a non-commissioned officer or soldier shall be convicted before it of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjudge such non-commissioned officer to be reduced to serve as a private soldier, or may adjudge a non-commissioned officer or soldier to be placed lower in the list of the rank which he holds, with proportionate loss in respect to length of service, such loss to be distinctly specified in the sentence, and to be restorable by the Commander-in-chief, or may adjudge such non-commissioned officer or soldier to be imprisoned for any period not exceeding four months, or to be imprisoned with hard labour for any period not exceeding two months, and may direct the prisoner to be kept in solitary confinement for any portion or portions of his term of imprisonment not exceeding one month at a time; and in addition to any such punishments, may adjudge a forfeiture of all claim to pension on discharge which might otherwise have accrued to such non-commissioned officer or soldier from the Powers of punishment vested in all courts martial; non-commissioned officers punished with loss of rank, &c.

the length or nature of his service. Provided, that no soldier who has undergone the punishment of imprisonment with hard labour under the sentence of any court martial shall be capable of being re-admitted into the ranks, or receiving pension on discharge.

Corporal punishment not to be awarded, except for offences by camp followers.

Art. 72. It shall not be competent to any court martial to sentence any non-commissioned officer or soldier to be flogged, but camp followers, not above the condition of menial servants or labourers, shall be liable to corporal punishment not exceeding 100 lashes, with or without nine tails.

No person to be tried a second time for same offence.

Art. 73. No person being acquitted or convicted before a court martial of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence.

Limitation of liability to trial.

Art. 74. No person shall be liable to be tried or punished for any offence against these rules and articles, which shall appear to have been committed more than three years previous to the order directing the assembly of the court martial whereby he is to be tried, unless the person accused, by reason of his absenting himself, or some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried, at any time not exceeding two years after the impediment shall have ceased.

Non-commissioned officers, how to be reduced.

Art. 75. No non-commissioned officer shall be reduced to the ranks but by the sentence of a court martial.

Punishments otherwise than by Courts Martial.

Jurisdiction of commanding officer; without a court martial, may award drill or extra duty, or confinement in the quarter-guard. Court martial precluded from awarding such sentences.

Art. 76. In cases of light offences, a commanding officer may, without the intervention of a court martial, award extra drill or extra duty, not exceeding 15 days, or confinement in the quarter-guard for not exceeding three days; and none of these descriptions of punishment shall be awardable by sentence of a court martial.

Of Complaints.

An officer, non-commissioned officer, or soldier, considering himself wronged by his superior, may complain to his commanding officer.

Art. 77. If any officer, non-commissioned officer, or soldier, shall think himself wronged by his superior or other officer, he is to complain thereof to the commanding officer of his troop or company, by whom if the grievance be not redressed, such officer, non-commissioned officer, or soldier, may complain to the commanding officer of his regiment, who is hereby required to examine into such complaint, or remit it to his superior authority, as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished by the sentence of a court martial, according to the circumstances of the case, by being reduced in rank, or suspended from rank, or by being imprisoned or deprived of pay and allowances, according to the manner and to the extent as by these articles may be awarded by any court martial.

Allowances under Arrest.

Commissioned officer, non-commissioned officer, or soldier, confined on a criminal charge, not entitled to full pay, &c. during his absence from his regiment, &c.

Art. 78. Any commissioned officer, non-commissioned officer, or soldier, under arrest, or in confinement under a charge of any offence, shall not be entitled to receive his full pay and allowances from the day of his commitment till the day of his return to duty in his regiment, or to the party he shall be ordered to join, but shall be subsisted at a rate proportioned to his rank; and if he be acquitted he shall receive the balance of all arrears of pay and allowances accruing during the time of his confinement.

Execution of Sentences by Courts Martial.

Sentence of death. Nizamut Adawlut to give effect to sentences of transportation.

Art. 79. Sentence of death shall be executed in like manner as such sentence is executed when awarded by courts martial for the trial of the East India Company's European troops. Whenever the sentence of a general court martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, the Nizamut Adawlut shall give effect to such sentence or commuted sentence, on the sentence being certified to the court by the Adjutant-general, or his deputy, under the authority of the Commander-in-chief.

Imprisonment.

Art. 80. Persons sentenced to imprisonment by courts martial shall be imprisoned in any public prison, or in any other fit place which the Commander-in-chief at the presidency to which the prisoner may belong shall appoint, provided such place be within such presidency.

Art. 81. Whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, or with solitary confinement, or both, it shall be the duty of any magistrate to give force to such sentences on the offender sentenced to imprisonment being delivered to his custody, and on being furnished with a copy of the sentence by the general or other officer commanding the division or district, within which the trial is held.

Magistrates to give effect to sentences of imprisonment by military authority.

Art. 82. In every case wherein a fine or pecuniary compensation shall be adjudged by a court-martial, any arrears of pay or public money due to the offender, or any property belonging to him in camp, garrison, or cantonment, shall be available, under an order from the officer commanding, for the payment of the amount so adjudged. And the goods and chattels of the offender may be distrained on, and the distress sold by warrant under the hand of the president of the court martial.

When a fine is adjudged by a court martial, the pay or property, &c. of the offender within camp, &c. shall be available.

Section IV.

Effects of the Dead.

Art. 83. When any commissioned officer, non-commissioned officer, or soldier, or any person receiving public pay drawn by any officer in charge of a public department belonging to the army, may die or be killed in the service, the commanding officer of the regiment or party, or officer in charge of the department, shall secure his effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the adjutant, or officer in charge of the department.

Effects of deceased commissioned officers, non-commissioned officers, soldiers, and public servants.

Art. 84. If there be no executor on the spot appointed by the deceased, the effects are to be publicly sold, the commanding officer of the regiment or party, or officer in charge of the department, after discharging the debts of the deceased, viz. the expense of funeral ceremonies, his debts in camp or quarters, and regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or in failure of such to the legal representative of the deceased, and in the event of no executor, heir, or other representative of the deceased attending and establishing his claim within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate, is to be remitted to the general treasury at the presidency.

Rules to be observed in the disposal of the effects of the deceased, if no executor be on the spot.

Section V.

Articles relating to Service out of the British Territories, Martial Law, Rebels, Pay during Imprisonment by the Enemy, Effects of Deserters.

Art. 85. Whenever any body of the troops shall be employed where there is no British court of civil judicature, any officer, soldier, or other person amenable to military law, accused of murder, robbery, or other serious offences against person or property, shall be liable to be tried by a general court martial, and punished with death, or otherwise, according to law.

When troops are serving where there is no court of civil judicature, serious offences may be tried by general court martial.

Art. 86. In any place out of the British territories or in states in alliance with the British Government, where the troops shall be in military possession, the officer commanding any division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers at the least, for the trial of any person under his command, accused of any crime committed against the property or person of any inhabitant or resident at such place, or of having committed violence or any other offence, and every such court martial shall have power to adjudge any person so accused to suffer the punishment herein prescribed for the crime or offence charged; but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party, shall belong.

General courts martial may be assembled for the trial of any person accused of any crime committed against the property, &c. of an inhabitant of any place out of the British territories where the troops shall be in military possession, &c.

Art. 87. And in all places within the Company's territories where martial law shall have been by due authority proclaimed, the officer commanding the division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers, for the trial of any person owing allegiance to the British Government who may be taken in arms against the said Government, or who may be assisting in rebellion by maliciously attacking or injuring the persons or properties of any loyal subjects, or in any other manner; and it shall be lawful for any such court martial to adjudge any person so found guilty to suffer death,

General courts martial may be assembled for the trial of persons owing allegiance to the British government who may be taken in arms against the said government, &c.

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Articles of War.

death, by being hanged by the neck until dead, or to be otherwise punished as to such court martial shall seem expedient; but no sentence shall be executed until confirmed by the said commanding officer.

And the commanding officer of every such division, detachment, or distinct party, is hereby authorised to arrest and detain in custody all persons engaged in such rebellion, or suspected thereof, and to cause all persons so arrested and detained to be brought to trial, and to execute the sentence of all such courts martial, whether of death, or otherwise, and to do all other acts necessary for such several purposes.

Persons aiding, &c. the enemy, amenable to court martial, and liable to suffer death.

Art. 88. Every court martial, as constituted in the preceding article, shall have power to try any person owing allegiance to the British Government, who shall be taken in arms against the state, or otherwise aiding and abetting the enemy; and such person so found guilty shall be liable to the punishment of death, by being hanged by the neck until dead, or to transportation for life; but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party, shall belong.

Sentence not to be executed until confirmed by the officer commanding.

Any officer, non-commissioned officer, or soldier, made prisoner, to forfeit all claim to pay and allowances, &c.

Art. 89. Any officer, non-commissioned officer, or soldier, who shall be taken prisoner by the enemy shall forfeit all claim to pay and allowances during the period of his remaining a prisoner and until he shall again return to the service; when, if he can establish before a court martial, that he was unavoidably taken prisoner in the course of service, and that he hath not served with or assisted the enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole, or such portion of his arrears of pay and allowances as the court martial shall award.

Effects of Deserters.

Art. 90. The effects of deserters are to be publicly sold, and the proceeds, after payment of regimental debts, remitted by the officer commanding the corps to which the deserter belongs, to the general treasury at the presidency.

Section VI.

Application of the Articles.

Art. 91. All officers, non-commissioned officers, soldiers; all drivers or farriers, trumpeters and drummers; all hospital attendants, sub-assistant surgeons and dressers; all artificers and labourers, sutlers, camp followers, or others attached to or serving with any part of the army, are to be governed by these articles, and subject to trials by courts martial.

Section VII.

Promulgation of the Articles.

Art. 92. These articles are to be translated into the several languages of the different presidencies, and the parts following, viz. are to be read once every six months at the head of every troop or company mustered in the service.

Ordered, That this draft be reconsidered at the first meeting of the Legislative Council after the 19th day of December next.

(signed) *T. H. Maddock*,
Offg Secy to the Govt of India.

(No. 843.)

Legis. Cons. 19th Nov. 1838. No. 15.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general.

Sir,

Legislative Dep.

On the occasion of transmitting to you, to be laid before the Right hon. the Governor-general, the enclosed printed copy of the proposed articles of war for the government of the native officers and soldiers in the military service of the Hon. East India Company, and for the administration of justice by courts martial, I am directed to state, that the article relative to the trial of Christians, the descendants

descendants of Europeans, has been omitted in consequence of the President in Council deeming it expedient to make a reference on the subject of that article to the governments of Madras and Bombay, as to the effects which its adoption would be likely to produce in the armies of those presidencies.

I have, &c.

Fort William,
19 November 1838.

(signed) *T. H. Maddock*,
Offg Secy to the Govt of India.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India,

Legis. Cons.
19th Nov. 1838.
Nos. 16 & 17.

(No. 865.)

To *H. Chamier*, Esq. Chief Secretary to the Government of Madras.

(No. 866.)

To *J. P. Willoughby*, Esq. Secretary to the Government of Bombay.

Sir,

I AM directed to request that you will lay before the Right hon. the Governor in Council of Madras (Hon. the Governor in Council of Bombay,) the enclosed printed draft of proposed articles of war for the government of the native officers and soldiers in the military service of the Hon. East India Company; and that you will state, for the information of the Governor in Council, that in the original draft of these articles, there was inserted a provision, in the words quoted in the margin, (A.) to exempt persons professing the Christian religion from amenability to these articles. Objections being made to the provisions of this article by the Law Commissioners, in which the Council of India were disposed to concur, an article, as copied in the margin, (B.) was proposed to be substituted for the original article. When this suggestion was submitted to the Governor-general, his Lordship proposed to introduce an article regarding persons professing the Christian religion, which is copied in the margin, and marked (C).

(A.) Persons professing the Christian religion, wherever born, or of whatever parentage, shall not be amenable to these rules and articles, but shall be subject to the Mutiny Acts and articles of war in force from time to time for his Majesty's forces, or for the Hon. Company's troops, according to the nature of their service.

(B.) That all persons serving with native corps, except such persons as are amenable to the rules and articles of war, for the better government of the officers and soldiers in the service of the East India Company, made by the Crown, under the authority of the Imperial Legislature, shall be amenable to these rules and articles.

(C.) Persons subject to these rules and articles, of European descent, and professing the Christian religion, shall be amenable to courts martial and courts of request, composed of European officers.

2. It appearing that it is in the army of the Bengal presidency only where any distinction has been made in the trials of Christians, on account of their religious persuasion, and that no such practice is understood to have ever prevailed in the armies of Madras and Bombay, a revised article was proposed by the fourth ordinary member of Council, in modification of those previously suggested, and so drawn as to maintain the practice at present prevailing in the armies of the different presidencies; that article, marked (D.) is inserted on the margin. In the printed draft now transmitted, all mention of a distinction between Christians and others amenable to the articles has been omitted, and none of the proposed forms of an article on the subject have been adopted. The reason of this omission is, that the Hon. the President in Council entertains great doubts of the expediency of declaring any such distinction, particularly in the armies of Madras and Bombay, where it is understood it never existed, and where Christians are more numerous than in the Bengal army.

(D.) All persons of the descriptions mentioned in the last article professing the Christian religion, are to be governed by these articles, save that in the trials of such persons by courts martial, the usage of the presidency to which they belong, touching the constitution of the court martial, shall continue to be followed.

3. In the latter army there is no legal provision for such distinction, but in conformity to a General Order of the Commander-in-chief, dated the 6th July 1802, it has been ordinarily made. The following is a copy of the General Order in question:—

"The Commander-in-chief directs that in future all drummers, fifers, and soldiers of every description professing the Christian religion, whether born in Europe or India, and without reference to their parentage, be tried on any crime of a military nature which may be preferred against him by courts martial composed of European commissioned officers only."

No. II.—Part 1.
Articles of War.

4. A necessity for the early enactment of the proposed articles of war having been urged by the Commander-in-chief, the exigency of the case prevented his Honor in Council from deferring the publication of the draft till a reference could be made to the subordinate governments, in order to ascertain their sentiments on the expediency of inserting an article of the nature of any of those which have been under the consideration of the government of India in a military code, applicable to the armies of all the presidencies. It was deemed best to publish the draft without any article containing a provision of this nature, and to ascertain from the subordinate governments what is considered likely to be the effect of legalising any distinction between Christians and others in the description of courts by which they are liable to be tried; and I am now directed to solicit the early communication of the sentiments of the Right hon. the Governor of Madras (Hon. the Governor of Bombay,) on this subject.

I have, &c.

Fort William,
19 November 1838.

(signed) *T. H. Maddock*,
Offg Secy to the Govt of India.

Legis. Cons.
19th Nov. 1838.
No. 18.

Fort William, Legislative Department, 19 November 1838.

Read an extract, Military Department, dated 9th July 1838, forwarding copies of papers from General Casement on the proposed articles of war.

Ordered, That a printed copy of the articles of war, as read in Council for the first time on this date, and promulgated for general information, be forwarded to the Military Department, with reference to the extract from that Department of the 9th July 1838, and that the original papers be returned.

No. II.—Part 2.
Articles of War.

—(A.) No. II.—Part 2.—

Legis. Cons.
20 May 1839.
No. 6.

Minute by the Hon. *A. Amos*, Esq., dated the 4th January 1839.

Minute on the Articles of War.

Certain draft articles of war, prepared under the direction of the Commander-in-chief, were submitted to the Legislative Council. These were referred (as usual at that period) to the Law Commission, who reported upon them. The Council afterwards passed a series of resolutions with reference to the Report of the Law Commission. Afterwards the Governor-general, being then absent from Calcutta, wrote a paper of observations with reference to the resolutions of Council. In this state the papers came into my hands.

I altered the Commander-in-chief's original draft according to the joint opinions of the Governor-general and the Council, where they coincided; where they differed I divided the knot in the best way I could; and besides remedying some technical defects, I endeavoured to supply an arrangement of the articles, in which respect the original draft was very deficient; but the principal alteration which I made, and in the principle of which I was supported by the Report of the Law Commissioners, was, that the punishment for every offence which might be punished by a court martial should be specifically stated. The military officers have, in every communication, appeared to be desirous of giving to courts martial a general power to punish "according to the circumstances of the case," leaving the extent and nature of the punishment quite indefinite. I think it is probable that they have not considered that several vague expressions of a similar nature, which occur in the articles of war for the Queen's troops, are explained and limited by the Mutiny Act; whereas the present instrument is more properly a Legislative Act in the form of articles, and can only be explained and limited by itself. I think that our 47th Article is as great a concession as we can with propriety make to these military views.

The draft which I prepared was transmitted to head-quarters, and we received it again, accompanied with observations by the Governor-general and the Commander-

mander-in-chief. The suggestions contained in these observations were assented to by the Council, with exception of what related to the clause concerning the trial of Christians, upon which subject the Council made inquiries of the governments of Madras and Bombay.

The articles were printed according to what it was considered had been concurred in by all parties, omitting only the clause relative to Christians, which was reserved for further consideration.

Upon the articles being published, I collected many suggestions and criticisms from the newspapers, and in private conference, all of which I sent to head-quarters, and upon these the Judge-advocate and General Casement have expressed their views. The views of these officers I have, I believe, closely adopted, with the exception only of what regards solitary confinement for the higher species of offences. Besides alterations in the printed draft arising out of the letters from head-quarters, I have made, in conference with Captain Birch (who has had considerable experience in the department of Judge-advocacy), or pursuant to his notes, sent herewith, several other alterations in the printed draft. But, except as mentioned below, I should propose to leave all the alterations in the printed draft optional with the authorities at head-quarters; and thus a single reference, which will be essential for the Governor-general's agent, may suffice for all purposes.

Should no objection be made in Council to leaving the alterations in the printed draft with this understanding, the Council will only have three matters further to consider.

1. The Commander-in-chief still continues to express regret that military courts of request are not provided for in the articles. It will be recollected that the Law Commissioners and the Council were against including them in articles of war upon principle; but independently of this objection, it appears to me that, the provisions would be too prolix for articles of war, and that the number of questions to be solved would occasion inconvenient delay. It would seem that, according to the views of the Commander-in-chief, the whole subject might be disposed of by a single article, viz. Article 84 of the original draft. But without entering particularly on the subject in this place, I may observe, that I doubt whether the Commander-in-chief has considered the consequences of abrogating (as that article does) the punchayet system of Madras, or of continuing at Madras or Bombay, and still more of introducing by that article into Bengal, the power of stopping pay upon failure of a general execution.

2. With respect to the clause concerning Christians, nothing further can be resolved at present until we receive advices from Madras and Bombay.

3. With respect to clause 73, a very important question arises. At the time when the articles were printed it was supposed that all parties concurred in the article as it stands in the Gazette. Whether this supposition was correct or not is not now material to discuss, the practical question being whether, after the inquiries or discussions to which our printed draft has given rise, and upon a view of the whole subject, we think it right, on the one hand, to exempt non-commissioned officers and soldiers from flogging, or on the other, to subject camp followers to that punishment.

I send round the despatches of the Court of Directors upon the subject, a note by Mr. Robertson, and some private papers. I am no competent judge upon the expediency of the measure, especially upon what I conceive to be the most material question, the effect of a revival of the practice of flogging upon the dispositions of the native army; but shall endeavour to explain our legal position, bearing, however, in mind, that the native community cannot be expected to make any distinction between the legal or illegal acts of government, especially where an illegal act may have governed the usage.

I submit for consideration whether, in the Bengal army, the power of inflicting corporal punishment did not depend on articles of war, in the Madras army on the express terms of a Regulation, Regulation V. of 1827, Articles 5, 19, &c., and in the Bombay army on the general though vague terms of a Regulation, Article 22 of 1827; and that there is strong ground for believing that the General Order which abolished flogging, especially if it be not confined to Bengal (*quod vide*) is void in point of law.

This General Order stands reprobated by the Court of Directors; but on the other hand, the Directors have not ordered it to be recalled, and have suffered a usage to grow up under it.

If we omit clause 73 altogether, we in fact abolish flogging; this, however, may be

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be better than expressly abolishing it. The only mean causes which occur to me, are to insert a proviso that the articles are not in any way to alter the existing law with regard to corporal punishment, or to allow flogging for certain offences only, or to give the executive government a power to suspend or reinforce the provision at their discretion.

Please to refer to Sir H. Fane's remarks on Article 72 of the MS. draft revised by him. These remarks are not noticed in Lord Auckland's official letter concerning the same draft. *See* the Governor-general's observations on Articles 78 & 87 of the original draft; also Articles 78 & 87 of the original draft; also paragraph 19 of the resolutions of Council. The Law Commissioners do not appear to have noticed the subject.

(signed) *A. Amos.*

Legis. Cons.
20 May 1839.
No. 7.
Note on the proposed Articles of War.

MINUTE by the Hon. *T. C. Robertson*, Esq., dated 7 January 1839.

IT is with the most unfeigned reluctance as well as diffidence that I approach a question to appearance of a purely military nature; one beset, too, with difficulties, and fraught with the most momentous consequences.

Drawn up, as it evidently is, with admirable skill, and subjected as it has been to the scrutiny of many who are well able to judge of the sufficiency of its provisions, I should indeed be happy could I, consistently with my own ideas of duty, avoid recording a single line of comment upon the proposed new military code.

But as I cannot escape from the obligation imposed on me by my situation of joining in its enactment, I may not shrink from the no less imperative obligation of pointing out wherein this code strikes me as being defective.

It would perhaps be more correct to say, that it is in the preliminary inquiry that something appears to me still to be wanting, for I am not yet prepared to suggest the slightest modification of the code itself.

The law that permits the infliction of corporal punishment in the native army cannot, I apprehend, be considered to have as yet been abolished by any legislative Act.

The Rule or Ordinance of the 24th February 1835, can hardly be held to possess the weight and sanction of a law, and therefore, under the terms of the concluding passage of the 73d section of the 3 & 4 Will. 4, the original article of war on this particular point is only now about to be formally repealed.

Under this view of the question, the step which we are called upon to take in passing the new code becomes one of the highest, the most vital importance, and ought not therefore to be ventured on without the most matured and comprehensive deliberation.

As I cannot find that any opinions even have been collected on the practical working of what I must regard as having hitherto been only an experimental measure, I cannot think that the code which is to give irreversible permanence to that very measure is yet ripe for enforcement.

I therefore propose that the sentiments of a limited number of the leading military men at the three presidencies be called for on the important question of what have been the results of the rule exempting the native soldiery from corporal punishment, and what may be those of its perpetuation or rescission.

(signed) *T. C. Robertson.*

Legis. Cons.
20 May 1839.
No. 8.

(No. 193.—Military Department.)

From *S. W. Steel*, Lieut.-colonel, Secretary to Government of Fort St. George, to the Secretary to the Government of India, Military Department.

Sir,

I AM directed by the Right hon. the Governor in Council, in transmitting the accompanying extract, No. 192, from the Minutes of Consultation of this date, in reply to your despatch of the 19th November last, No. 865, to the address of the Chief Secretary to government, to request that it may be submitted to the Hon. the

the President of the Council of India in Council, requesting the particular attention of the government of India to the observations upon Article 59, in the letter from the Acting Adjutant-general of the army, dated 18th, and to para. 11 in that of the 20th ultimo.

I have, &c.

Fort St. George,
15 Jan. 1839.

(signed) *S. W. Steel*, Lieut.-Colonel,
Secretary to Government.

(No. 774.)

From *J. R. Haig*, Esq. Acting Adjutant-general of the Army, to the Secretary to Government, Military Department.

Legis. Cons.
20 May 1839.
No. 9.

Sir,

I HAVE the honour, by order of the Commander-in-chief, to submit the following observations on the draft of proposed articles of war for the government of the native armies of the Honourable East India Company, published in the Fort St. George Gazette of the 7th instant, which his Excellency deems that it is of paramount importance should be transmitted for the consideration of the government of India, before the code therein proposed be finally confirmed, or made applicable to the army of this presidency.

Articles 1 and 2.

The declaration and oath prescribed in Articles 1 and 2 are not at all suitable to the native army of Fort St. George, every individual in which has been enlisted and sworn to serve the government with loyalty, and faithfully to obey the orders received from his officers, without specifying, or deeming it necessary to specify, under what circumstances, for which service, or in what country, that loyalty or that obedience was to be manifested; and his Excellency is of opinion that it would be invidious, as well as impolitic, to impose a condition on those who may hereafter enter the army, which has been proved quite unnecessary for those who already fill its ranks; nor would it appear advisable to suggest to the old soldiers that they are not at present bound to proceed on foreign service, still less to remove any such impression after it may have been created by administering a new oath.

His Excellency would, therefore, earnestly suggest, that the oath of allegiance now in use for this army be retained, as simple in its form, yet still sufficiently binding in its conditions, viz.:

"I, , private, do swear that I will serve the government with truth and loyalty, and that I will faithfully obey the orders of all officers set over me; I do also swear that I will never abandon these colours, and that I will defend them with my life."

Article 4, addition suggested.

It is suggested that the words, "and that in any other regiment or corps to which they may have formerly belonged," be added to Article 4.

Article 9.

The specification in the rubric would appear equally necessary in the text of Article 9, to limit its provisions to sentinels alone, instead of the general application it at present bears.

Articles 40 and 41.

The punishments awardable by courts martial, for the offences specified in Articles 40 and 41, are limited by Article 70 to suspension from rank and pay, loss of rank, and imprisonment for four months; it is, therefore, suggested that the word "officer," in Articles 40 and 41, *in toto* be omitted, leaving the offences therein enumerated to come under Article 37, or that "dismissal" be added to the list of punishments in Article 70; for it would appear incongruous to decree that an officer should be dismissed for disgraceful conduct in general, or for breaking his arrest, when no such punishment can be awarded for breaches of Articles 40 and 41, which are alike obnoxious to discipline and repugnant to the character of an officer.

Article 44.

It would appear advisable to insert a provision in Article 44, for the wilful or negligent injury and destruction of the arms, &c. &c. of a comrade, as well as of those entrusted to, or the individual property of, the soldier offending against this article, by inserting the words, "or any of the above articles entrusted or belonging

Addition suggested.

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Articles of War.

ing to any other non-commissioned officer or soldier," immediately after " regimental necessaries," and before the word " shall."

Article 51. It would seem necessary to redraft Article 51, for, as at present worded, its provisions would appear applicable to all ranks and descriptions of persons; whereas those not amenable to military law could not be punished by a military court; and of those who are amenable, a commissioned officer can only be tried, and consequently punished, by a general and not by any court martial, as is implied in the article as it at present stands.

Article 52. Article 52 makes no provision for the commutation, although it does for the remission and mitigation of punishment awarded by a court martial. This would, in reference to Article 79, appear to have been inadvertently omitted; and the following addition to this article is therefore suggested:

Addition to Article 52, suggested. " And when death shall have been awarded, to commute that punishment to transportation for life, or for any term of years, or to imprisonment, with or without hard labour, for life, or for any term of years."

Article 53. In Article 53 it is provided that a general court martial, held out of the British territories, may consist of five members, if a greater number be not available; in Article 86 it is laid down that such court shall be composed of not less than seven officers. The want of concord in these articles would seem to require amendment.

Article 54. In Article 54 it is laid down that no sentence of a general court martial shall be carried into execution until confirmed by the Commander-in-chief of the forces at the presidency to which the prisoner belongs; by section 86 the officer commanding the troops on service out of the British territories is empowered to confirm such sentence. This disagreement would seem to require correction.

Article 56. The provisions of Article 56 would appear to preclude the possibility of an artillery soldier of the coast army being ever tried by officers of his own arm of the service, as there are no detachments of artillery which consist of four companies, or which amount numerically to that number. In the Straits also, and many other situations, the enactment of this article might have the most prejudicial effect on discipline, when the lapse of time which must occur ere reference could be made to regimental head-quarters is considered.

Article 58, addition suggested. It is suggested that the words " or other" should be inserted after " general," in Article 58, to make its provisions applicable to " all" courts martial.

Article 59. As it is of the utmost importance that minor courts martial should be conducted by officers acquainted with, and fully competent to perform, the duty, particularly in reference to the increased powers which will be vested in such courts under the proposed code; and as it would seem hardly possible that an officer selected casually, with the mere qualification of five years' service, could possess the requisite experience or acquaintance with the nature of the momentous duty imposed upon him, the Commander-in-chief would suggest that the practice which obtains under this presidency, of appointing an adjutant to superintend the proceedings of such courts, should be continued as a general rule; and where the adjutant may not be available, that then an officer of not less than five years' standing, should be appointed to supply his place. The advantage of the plan proposed is, that an officer, whose errors in conducting courts martial are continually pointed out to him by the Judge Advocate-general's department, on the proceedings being supervised, naturally gains an experience and knowledge of the practice and provisions of military law, which can hardly have been attained by an officer who has merely served five years, unless, indeed, his attention has been more particularly directed to that branch of his duty than is at all usual in the service.

Suggestion, that adjutants should superintend minor courts martial.

First omission in Article 59.

Second omission in Article 59. It would also appear to be an omission that no Judge Advocate is expressly appointed to conduct the proceedings of a general court martial, although his presence is implied in Article 62; nor is it specified by whom the oath to interpret truly is to be administered to the superintending officer, when required to act as interpreter to a minor court.

Article 62. In reference to Article 62, no provision is made for the absence of an interpreter at a general court martial.

The

The Commander-in-chief earnestly recommends that the provision in this article, making it unnecessary that oaths should be re-administered at the commencement of a fresh trial, be omitted, for no native, accustomed to our forms of justice, could ever be persuaded that he was indeed under trial before a court the members of which he had not seen sworn as usual; besides which, the provision being absolute, as it now stands a court might continue adjourned for months, and then be re-assembled for a fresh trial. In such case, if it were ever necessary to impose the obligation of an oath on members of a court martial, it would appear equally necessary to renew the solemnity after so long an interval. Provision recommended to be omitted.

But should it be determined to preserve this very objectionable provision, it would seem requisite to alter the form of the oaths administered, and substitute the words, "any sentence which this court may pass until," &c. &c. for "the sentence of the court," &c. &c.; and again to insert a clause to insure secrecy in regard to every, as well the particular, vote or opinion given by the members of the court on the first trial. Necessary alteration in the oaths, if the provision to be retained.

In reference to Article 65 it may be observed, that the term "Ishwar" would not be intelligible to the natives of Southern India generally; and therefore the Commander-in-chief suggests that "Almighty God" be substituted for "Ishwar" in the declaration to be subscribed by Hindoos exempted from taking an oath. Article 65.

The conclusion of Article 66 would seem to imply that the superintending officer at a general court martial is entitled to vote. It appears advisable to remove this ambiguity. Article 66.

In reference to Article 67, it would seem necessary to provide for the number of members of courts assembled under Articles 53 and 86, who shall concur in a sentence of death, ere it can be recorded. Article 67.

That a soldier should be made acquainted with the nature and extent of the charges preferred against him, before he be arraigned on them, appears fraught with so many advantages, and altogether so very advisable, that his Excellency recommends that an addition to Article 68 be made as follows: Article 68.

Addition recommended.

"Every officer, non-commissioned officer, or soldier, shall be furnished with a translation, in Hindoostanee, or other native language more intelligible to him, of the charge or charges on which he may be about to be tried, at least 24 hours prior to the assembly of the court martial.

"Provided always, that no manifest impediment exists to the provisions of the above clause."

His Excellency does not conceive imprisonment to be a punishment which it would be at all advisable to introduce, as applicable to native commissioned officers ever intended to be restored to the service, as it can hardly admit of question that the influence and authority of an officer so situated would be completely destroyed; moreover, the being liable to so degrading a punishment would most materially tend to lessen, if not completely eradicate, that feeling of self-esteem, as a man, and high honour, as a native gentleman, which it has ever been the object of government to instil, and have considered as the concomitants of holding a commission in our native army. His Excellency would, therefore, earnestly recommend that imprisonment be erased from the provisions of Article 70. Article 70.

His Excellency would also suggest that, putting it in the power of a court martial to deprive a soldier, perhaps at the commencement of his career, of all hope of the prospective advantages derivable from service, however lengthened or however meritorious, would appear at the same time to deprive government of all reasonable expectation that an individual so situated would ever become a good or efficient soldier. What incentive, under such circumstances, remains to future propriety of conduct, but the fear of punishment which might attend its absence? And the Commander-in-chief, under a firm conviction that such a check to crime would prove utterly useless, recommends that this clause of Article 71 be modified as follows: "And in addition to any such punishments, may adjudge discharge, involving forfeiture of all claim to pension which might otherwise have accrued to such non-commissioned officer or soldier, from the length or nature of his service." Article 71.

Modification suggested.

Addition of corporal punishment recommended.

The promulgation of a new code for the government of our native troops, would seem the most favourable moment which could occur for the re-introduction of corporal punishment by the lash, in extreme or disgraceful cases.

His Excellency's sentiments on the absolute necessity of the power to inflict this punishment being continued to military authority, have been so fully expressed in a letter from this department, dated 30th September 1837, that it were needless to repeat what may be termed axioms in military government; but his Excellency would, at the present crisis, direct attention to the serious dilemma in which an officer in command of troops evincing an insubordinate spirit on ship-board, must be placed, deprived as he is of any other means of repressing even open mutiny by the instant punishment of a ringleader, except cutting him down. The Commander-in-chief would, therefore, again most importunately urge the necessity of an opportunity like the present being seized to remedy the serious evils which have resulted, by the common acclaim of every soldier of experience, from the abolition of corporal punishment in the army.

Mulct of good-conduct pay recommended to be included.

It would also appear advisable to include the forfeiture of good-conduct pay in the provisions of this article.

Article 76.

The provisions of Article 76 do not appear to confer sufficient power on officers commanding regiments, for the punishment of minor offences; and unless they be very greatly extended, a constant, most unnecessary, and unadvisable recourse must be had to trial by courts martial. But the Commander-in-chief is of opinion, that arbitrary punishment of this description falls more naturally within the provisions of a code of standing orders for the interior economy and discipline of the army, than of an article of war; the one may be readily altered according to the exigencies of service, the other should remain a law, to be changed as seldom as possible. His Excellency therefore recommends that this article be altogether omitted; or if it remain, that it be modified as follows:

Modification recommended.

"In cases of minor offences, a commanding officer may, without the intervention of a court martial, award extra drill for a period not exceeding 15 days, extra duty to the extent of eight hours, restriction to barrack limits for a period not exceeding 15 days, confinement in a defaulter's room or solitary cell for a period not exceeding seven days, removal from staff situations, such as colour and hospital havildar, or reduction from lance or acting appointments; and none of these descriptions of punishments shall, to the above limited extent, be awardable by sentence of a court martial."

Article 78.

It is not the practice for the soldier of the Bengal native army to bring his family to regimental head-quarters, and consequently the provisions of Article 78 would be productive of little inconvenience to him, and of none to his family; but with the Madras sepoy the case is widely different; not only are his wife and children present with him, but generally every individual of his kindred also, who may be at all dependent upon him for support. No British soldier is more improvident than he of Southern India; and unless therefore conviction were sure to follow confinement on suspicion of an offence, the utmost distress and most severe punishment would inevitably succeed the placing a soldier under restraint, whether he were guilty or the reverse; and in all cases the innocent would suffer alike with the guilty. The punishment by this mode of one defaulter, must involve that of perhaps eight or ten persons who had committed no offence.

In Bengal the soldier, if acquitted, would be enabled to make his usual remittance to his family at the usual period, or if it were temporarily delayed, the circumstance could be of little or no moment; but in this presidency, the distress involved by the provisions of the article under review would be incalculable, and tend more to create discontent and disaffection among the native soldiery than almost any other measure which could be adopted. The European soldier is very properly mulct of a portion of his pay when under confinement; it not only prevents the accumulation of a fund to supply the means of dissipation, and consequent liability to the commission of crime on his release, but the punishment falls on the guilty alone; his wife and family are provided with an independent support from government; while were Article 78 made applicable to the Madras sepoy, in punishing an offender you starve his family, or, what is nearly as bad, force them to incur a debt, the pressure of which on the sepoy adds most heavily to that punishment, which in the judgment of a court martial was amply commensurate with the offence committed.

The

The Commander-in-chief therefore most earnestly recommmends that this article be altogether omitted, or made applicable to the Bengal army alone. Article recommended to be omitted.

In reference to Article 79 it would appear necessary to define the authority which shall be competent to commute a sentence of death, as proposed in the observations on Article 52. Article 79.

Many of the principal stations at which the Madras troops serve, viz. Kamptee, Jaulnah, and Seconderabad, are situated at such a distance from any public prison within the frontier of this presidency that it would be exceedingly inconvenient to send individuals who might be sentenced to imprisonment by courts martial to be confined as directed by the provisions of Article 80, and therefore an exception of those stations, or some other amendment of this article, would appear necessary. Article 80. Exemptions recommended.

The provisions of Article 83, although perfectly applicable to a soldier of the Bengal army, whose family or heir is seldom if ever with him in camp or quarters, would be deemed a most inquisitive and disgusting inquiry into the private family affairs of a sepoy of the coast army, whose heir, as was before observed, is generally at the head-quarters of his corps. It has ever been the practice of the Madras presidency to permit the heirs and family of the deceased to take, or rather retain, charge of his property; the Commander-in-chief therefore strongly recommends that this usage be retained, and that the words "if no heir be present," should follow the words "killed in the service." Article 83. Addition recommended.

The extensive ramification of relationship which exists in a native corps under this presidency, and consequent interchange of pecuniary obligations, would render it utterly impossible to adjust satisfactorily the debts in camp or quarters of a deceased individual, as proposed in Article 84; such adjustment had better remain, as has hitherto been the case, with the heir; and his Excellency therefore recommends that the words "the debts of the deceased, viz." and "his debts in camp or quarters," be omitted, and the words "or heir" inserted before "executor" in the commencement of this article. Omission recommended.

A clause or additional article would appear required to provide for the safe custody of the effects, or proceeds of sale of the property of persons, whether sutlers or others, not in the service, who may die while residing within the limits of a military bazaar. Additional clause recommended.

In Article 91, it would seem necessary to specify that private as well as public camp followers are liable to trial by courts martial under these articles. Article 91, specification recommended.

Should the right of appeal to European courts martial, which now exists under Regulation III. of 1829, be abrogated, Indo-Britons will, if not of legitimate birth, be subject to trial by natives alone, although widely different from them in manners, habits, and feelings. This class of people are to be found in all ranks of the army, and are eligible to hold commissions. It appears repugnant to every principle of justice, that the mere accident of legitimate or illegitimate birth should constitute the right to what may be termed a fair trial, or that the still more fortuitous circumstance of station in life should subject the one brother to a native, and the other to a European tribunal. If the native soldiery themselves hailed as a boon, and eagerly claim, on all important occasions, the privilege of trial by their European officers, to deprive East Indians of the right to trial by those who alone can be denominated their peers, and to subject them to a tribunal from which even men of the same habits, feelings, religion, and language, gladly appeal, would appear oppressive; and the Commander-in-chief therefore strongly recommends that all East Indians or Indo-Britons may be exempted from the provisions of Article 91, and declared subject to trial only before European courts martial, and under the European articles of war. East Indians recommended to be exempted from trial by native court martial, or under those articles.

It may also be remarked that the enactments regarding debts, of Article 7, sect. 9, of the present, are totally unprovided for in the proposed articles of war; and that a verbal inaccuracy has been retained in Article 35, which would make it appear that a false return might be called for. This can easily be corrected by the substitution of the word "any" for "such" in that article. Verbal inaccuracy in Article 35.

Adverting to the serious detriment to the service which sometimes arises from soldiers contracting heavy debts in the sudder or general bazaars of stations, his Excellency

No. II.— Part 2.
Articles of War.

Excellency, strongly recommends that an Order of Government, similar in substance to the provisions of Article 111 for the government of Her Majesty's army, be framed and promulgated; such a provision cannot with propriety be entered in the articles of war for the government of the native army, as its penal enactment, by which alone it finds a place in the Bengal articles, can only be applicable to Europeans, who will not be subject to the proposed code.

I have, &c.

Adjutant-General's Office,
Fort St. George, 18 Dec. 1838.

(signed) *J. R. Haig*,
Acting Adjutant-general of the Army.

(True copy.)

(signed) *S. W. Steel*, Lieut.-Colonel,
Secretary to Government.

(No. 785.)

Legis. Cons. 20 May 1839 No. 10.

From *J. R. Haig*, Esq. Acting Adjutant-general of the Army, to the Secretary to Government, Military Department.

Sir,

19 Nov. 1838. No. 865.

I HAVE the honour, by order of the Commander-in-chief, to acknowledge the receipt of Extract from Minutes of Consultation of the 18th instant, No. 4178, communicating copy of a letter from the officiating secretary to the government of India, and calling for his Excellency's opinion upon the subject of exempting individuals professing the Christian religion from amenability to the articles of war about to be promulgated for the government of the native troops.

2. The Commander-in-chief's sentiments upon this question, as far as it affects East Indians, have already been recorded in the letter to government from this department, of the 18th instant, No. 774, but as the present reference extends beyond East Indians, and includes all who profess the Christian religion, it is necessary for his Excellency to submit some further remarks upon the subject.

3. Hitherto no distinction has ever been made in this army in the trials of natives on account of their religious persuasions, and native Christians, in common with all others, have been always held amenable to trial by native courts under the native articles of war.

4. As men of this class are purely native in their habits, language, and associations, it does not appear to the Commander-in-chief that it would be of any advantage to them to be exempted from the usual course of trial, and as there is no necessity for any change, his Excellency considers it preferable to leave the established practice of the service in this respect unaltered.

5. The case of the East Indians in the native army is however altogether different. Under a General Order of the 16th June 1828, quoted in the margin, individuals of this description, if of legitimate birth, are declared entitled to trial by European courts and under the European articles of war, but if illegitimate, they are left to be dealt with as natives.

It having been legally decided that the legitimate descendants of Europeans (being British subjects), married to native women, are to be considered themselves as British subjects, his Excellency the Commander-in-chief directs that commanding officers will be guided accordingly in bringing to trial soldiers of the above description, who are entitled to be tried by a court composed of European officers, and according to the provisions of the articles of war for the government of the European troops.

6. This invidious distinction the Commander-in-chief earnestly desires should be abolished. The class affected by it includes nearly the whole of the warrant and subordinate grades of the medical department, many non-commissioned staff, and a numerous body of trumpeters, farriers, drummers, and musicians; all have been brought up as Europeans, either in the government or other English schools, and many of them, as in the case of medical warrant officers, are of highly respectable character and good education, nearly as distinct in every respect from the natives as Europeans themselves.

7. The injurious nature of the distinction will be self-evident when it is remembered that the two descriptions are unavoidably mingled together in every branch of the service, so that there is not a single regiment in which the trumpeters or drummers, for example, though all of precisely the same class, are amenable to the same articles of war. Under the existing regulations, indeed, the evil effects of this anomaly are partially obviated by the option which is allowed of appeal for trial by the European court, but the men are still tried as natives, and under the native article sof war.

8. In

No. II.—Part 2.. Articles of War.

8. In the European artillery and infantry, in which there are East Indians, some serving in the ranks and others as drummers and musicians, the distinction has never been admitted, and all, for obvious reasons, have been considered amenable to trial as Europeans.

10. The proposed articles of war, as at present framed, however, deprive both the legitimate of their privilege to be tried as Europeans, and the illegitimate of their right of appeal, subjecting all alike to trial as natives; and if Article 91, sect. 6, remains unaltered, no local regulations of a subordinate authority can relieve them from its provisions.

11. The Commander-in-chief would therefore recommend in the strongest terms that all East Indians without distinction should be declared amenable to trial only by European courts martial, and under the European articles of war; and with this view his Excellency would suggest a distinct Act to that effect should be passed by the government of India, and that Article 91 of sect. 6 should be modified by the addition to the penultimate clause of the words "and who are liable to be tried as natives." The Article will then stand as in the margin, and this will have the advantage of not leaving a question of such importance dependent upon the undefined usage of each presidency.

The draft of the proposed articles of war is herewith returned.

Art. 91.—All officers, non-commissioned officers, soldiers, all drivers or farriers, trumpeters and drummers, all hospital attendants, sub-assistant surgeons and dressers, all artificers and labourers, sutlers, camp-followers, or others attached to or serving with any part of the army, and who are liable to be tried as natives, are to be governed by these articles, and subject to trial by courts martial.

I have, &c.

Adjutant-general's Office, Fort St. George, 20 Dec. 1838.

(signed) *J. R. Haig*, Acting Adjutant-general of the Army.

(True copy.)

(signed) *S. W. Steel*, Lieut.-Colonel, Secretary to Government.

Minute by the Commander-in-Chief.

Legis. Cons. 20 May 1839. No. 11.

As this very important subject does not seem to admit of further delay, I can only briefly and faintly touch upon the opinions recorded by my predecessor inthe Acting Adjutant-general's letter of the 18th ultimo.

I would urgently recommend that the declaration and oath to be used at each presidency may be left to the local authorities. The sepoys now in the ranks will imagine that some change is intended which does not at first meet the eye, and I am afraid that they are disposed to think that it is intended to narrow their privileges, whilst we extend their services.

Art. 9. I agree with Sir P. Maitland that sentinels alone should be specified in this article. It is copied from Her Majesty's articles, but the want of specification is looked upon to be a defect in them.

Art. 44. This addition proposed by Sir P. Maitland will be useful in many cases, but I do not think it very important.

Art. 51. It will be advisable, in my opinion, to reconsider this article.

Art. 52. The Commander-in-chief of the Forces for the time being may mitigate or remit the punishments awarded by courts martial, but as he is not authorized to commute, is the substitution of transportation for death held to be a mitigation? or must the sentence be inflicted unless a pardon be granted?

Art. 59. I heartily adopt Sir P. Maitland's sentiments on this article; but I think a service of five years rather too short to give an assurance that the superintending officer has the requisite experience; I would propose that seven years be substituted.

Art. 60. I earnestly recommend that this article should be so worded as to render the attendance of an interpreter to all courts martial imperative, and that when the duly appointed interpreter of a regiment may not be available, the convening officer shall be held responsible that a duly qualified commissioned officer be appointed to the duty, or if such may not be had, then any other person in all respects competent.

Art. 62. I think that the opinion expressed by my predecessor respecting the re-administration of the oath is sound and judicious.

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Articles of War.

Art. 65. Upon the same grounds that I think the sepoy's oath on enlisting should be left to the local authorities, I recommend that the witness's oath should be framed at each presidency in communication with the Court of Sudder Adawlut.

If "Ishwar" be unintelligible, are we quite certain that "Almighty God" may not also be supposed to give the oath a Christian character, depriving it of all weight, whilst it raised suspicion.

Art. 70. I entirely concur in Sir P. Maitland's opinion upon this article, and would urge the propriety of expunging the last sentence.

Art. 71. It would in most cases be more beneficial to the service, and frequently to the individual, to discharge him, than to deprive him of all hope of prospective advantage.

Art. 72. As this is the first time that corporal punishment has been brought before me in a shape admitting of remarks, I embrace it to state my opinion that its abolition has been productive of the worst consequences to the discipline of the native army, and probably of serious discontent amongst the European soldiery. The sooner it can be restored the better, and in view to that great object I think the 72d Article might run thus:

"It shall be competent to any court martial to sentence a soldier to be flogged, unless when corporal punishment is restricted under the orders of the Supreme Government. No non-commissioned officer to be sentenced to corporal punishment without having been previously reduced to the rank and pay of a private sentinel, but camp followers, &c."

The agitation of this question has done very much injury to the army at home; but with every desire to relieve the soldiery from such a disgraceful punishment, it has been found unsafe, if not impracticable to do so.

The process with the soldiers in Europe seems now to be, insolence, insubordination, mutinous conduct, mutiny (or, in a late case, murder):—Transportation.

With the native army, insolence or intentional neglect, insubordination, mutinous conduct:—Discharge.

Revenge against the prosecutor or some supposed enemy after the lapse of a few months, murder:—Capital Punishment.

In too many cases two lives are sacrificed by this baneful relaxation.

The Acting Adjutant-general informs me that there have been 11 instances of native officers being murdered by sepoys within the last 39 years, and that eight of the 11 have occurred since the abolition of corporal punishment.

I cannot avoid asking myself frequently where and how will this end.

Every day's experience proves to me that the system is working great evil.

Art. 76. I entirely agree with my predecessor, in his opinion that these minor punishments should be left to the military authorities.

Art. 78. I hope that Sir P. Maitland's remarks upon this will produce the desired effect.

Art. 79. Appears to be at variance with the 52d Article, as already remarked.

Art. 80. This will necessarily be re-considered.

Art. 83. My predecessor's recommendation seems to merit attention.

Art. 86. Some of the principal stations of this army are in the territories of allied states, and the inhabitants or residents of the cantonments are British subjects; do the provisions of this Article apply equally to them and to the subjects of the allied states?

Art. 91. No doubt exists in my mind on this point, but as the insertion of a word will remove it in every case, it is advisable to introduce the word "private."

4. 53, 54. 56. 58; 62. 66 & 67.

The small alterations recommended by Sir Peregrine Maitland will no doubt receive all due attention.

7 January 1839. (signed) *J. Nicolls.*

(True copy.)

(signed) *S. W. Steel,*
Secretary to Government.

Legis. Cons.
20 May 1839.
No. 12.

MINUTE by the Commander-in-Chief.

8th January 1839.

HAVING given my best, though necessarily hurried attention to the despatch from the Government of India, dated 19th November 1838, I am of opinion that the clause marked (A.) in that letter is best calculated to uphold the pretensions of our numerous Indo-British fellow-subjects.

I should be exceedingly sorry to see the warrant and subordinate officers of the army rendered amenable to these native articles of war, and of course to trial before courts composed of native officers.

(signed) *J. Nicolls.*

(True copy.)

(signed) *S. W. Steel,*
Secretary to Government.

(No. 192.—Military Department.)

Legis. Cons.
20 May 1839.
No. 13.

EXTRACT from the MINUTES of CONSULTATION, 15th January 1839.

THE following papers are ordered to be recorded.

Here enter No. 5016, 18th December 1838, No. 774. — From the Acting Adjutant-general of the army.

Here enter No. 5035, 20th December 1838, No. 785. — From the Acting Adjutant-general of the army.

Here enter No. 135, 7th January 1839. — Minute by his Excellency the Commander-in-Chief.

Here enter No. 136, 8th January 1839. — Minute by his Excellency the Commander-in-Chief.

The Right honourable the Governor in Council observes that his Excellency the Commander-in-chief concurs generally in the observations of his Excellency Sir Peregrine Maitland upon the draft of native articles of war. His Lordship in Council is pleased to direct that copies of all the documents above recorded be transmitted to the Government of India, in reference to the letter No. 865, dated 19th November last, from the Secretary in the Legislative Department, with the following additional remarks:

Art. 1. If the Legislative intends to invest a court martial with authority to punish "any" person using menacing words, signs or gestures in its presence, there appears to be no objection to the article as it stands. If, however, military men only are in view, it would be advisable that the wording of the article should be conformable to the intention: thus, "any person 'amenable to these articles' using, &c." With respect to the objection taken to an officer being summarily punished by a court martial not having jurisdiction to try him, it may be said that the court only punishes a breach of the peace; and "every" court martial has authority to impose an arrest on an officer for disturbing its proceedings, so that it may probably be intended to give additional power to a court martial inferior to general, under the circumstances alluded to.

Art. 54. Unless the words "or any other offence," in Article 86, are intended to include "breaches of discipline," the authority given to the officer commanding the troops to confirm the sentence of a general court martial convened under Article 86, refers to civil offences only; and even should the term "any other offence" include breach of discipline, it would appear to be of consequence to render the meaning clear.

Art. 56. Native artillery soldiers when at head-quarters will naturally be tried by their own officers; when at an out station they will be liable to be tried by a court martial composed of mixed officers. At Penang, Singapore, and Malacca, a native artillery man, whose offences may not require to be brought before a general court martial, will be tried by a garrison court martial, the sentence being confirmed by the officer commanding the troops.

Art. 65. The objections made to the specific term in the draft of the articles of war, as well as to that proposed by Sir Peregrine Maitland, would perhaps be obviated by directing that the term to be used in the declaration shall be that by which

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which the Supreme Being is acknowledged or best known to the class or sect to which the subscribing witness belongs.

Art. 68. The addition recommended by his Excellency the Commander-in-chief to be made to this article is provided for under this presidency by a local general order, but it may be advisable that it should be included in the code.

Art. 78. If commanding officers of divisions and forces beyond frontiers had power to convene general courts martial, there would be little delay in bringing any offender to trial, whether officer or soldier, and the difficulty anticipated by his Excellency the Commander-in-chief would be obviated, the regulation being in every other respect likely to be most beneficial.

Art. 80. The object proposed by his Excellency the Commander-in-chief would appear to be best attained by substituting for the concluding proviso of this article some other limitations, such as "within such presidency, or under British authority within the territory in which the prisoner may be serving," or to that effect.

If the clause marked (A.) be adopted, it should specify that the exemption is confined to Indo-Britons, and does not extend to sepoys professing the Christian religion, who are in no other point distinguished from their native fellow-soldiers.

(True extract.)

(signed) *S. W. Steel,*
Secretary to Government.

(No. 236 of 1839.—Judicial Department.)

Legis. Cons. 20 May 1839. No. 14.

From *J. P. Willoughby*, Esq. Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, in the Legislative Department.

Sir,

In acknowledging the receipt of your letter dated the 19th of November last, No. 866, forwarding for the consideration of this Government the printed draft of proposed articles of war for the government of native officers and soldiers in the military service of the Honourable East India Company, I am directed by the Honourable the Governor in Council to transmit, for the purpose of being laid before the Honourable the President in Council, the accompanying copies of a letter from the Adjutant-general of the army, dated the 17th ultimo, and of its enclosure, submitting the opinion of the Major-general commanding the forces on the points noticed in your letter.

I have, &c.
(signed) *J. P. Willoughby,*
Bombay Castle, 21 January 1839. Secretary to Government.

(No. 46.)

Legis. Cons. 20 May 1839. No. 15.

From Lieutenant-Colonel *S. W. Powell,* Adjutant-General of the Army, to *J. P. Willoughby*, Esq. Secretary to Government of Bombay.

Enclosure.

Sir,

I have the honour to acknowledge the receipt of your letter of the 9th instant, No. 82, with its several accompaniments, and am directed by Major-General Sir J. F. Fitzgerald, K.C.B., to transmit to you, for the information of the Honourable the Governor in Council, the enclosed letter from the Judge Advocate-general of the army, submitting that officer's opinion on the point noticed in Mr. Secretary Maddock's communication.

After an attentive perusal of the whole of the papers connected with the point under discussion, Major-General Sir J. F. Fitzgerald, K.C.B., desires me to state that, in his opinion, native Christians ought to be tried by European courts martial, subject to the punishments ordered for the native army, for the following reason:

If brought before a court constituted of native officers, it is not improbable that the fact of having apostatised, particularly in the instance of a man of good caste, might lead the members of the court either wholly or partially to be prejudiced against

against the prisoner, and the Major-general considers it would be a matter of serious consequence if a native soldier was by any possible construction permitted to believe himself liable to punishment by embracing the Christian faith; by the addition of such a system it would be in vain to look for proselytes to Christianity in the native army.

I have, &c.
(signed) *S. W. Powell*,
Lieut-Col, Adjt-gen[l] of the Army.

Adjutant-general's Office, Bombay,
17 January 1839.

From Major *William Ogilvie*, Judge Advocate-General, Poona, to the Adjutant-General of the Army.

Sir,

I HAVE the honour to acknowledge the receipt of, and to return, Mr. Secretary Willoughby's letter of the 9th instant, accompanied by a copy of one from the officiating secretary to the government of India, in the Legislative Department, together with the printed draft of the proposed articles of war for the government of the native officers and soldiers in the service of the Honourable East India Company, on which I beg to submit, through the Major-general commanding the forces, the following observations.

Having fully considered the point submitted in Mr. Secretary Maddock's communication, I beg to state that an order issued by the Honourable the Governor in Council of this presidency, under date the 12th June 1823, is still in force, by which it is directed that "all persons the offspring of an European parent, whether father or mother, and their descendants professing the Christian religion, who are subject to military law, shall be tried when accused of any offence by courts martial composed of European officers."

Military Regulations, *see* XX. Art. 87, p. 140.

On comparing the foregoing order with that issued to the Bengal army on the 6th July 1802 (both of which at present stand on the same degree of authority), it will be observed that the former is more limited in the object of its operation than the latter; and I am enabled to state, that these were intended to be restricted to the class of persons termed *half-castes*, and their descendants, without reference to or in any way affecting others of the native troops, of whatsoever profession of religion they might be, and the order in question has hitherto, as occasion required, been acted on with good effect. I therefore beg to offer my opinion that it should receive a legislative sanction under the proposed enactment marked (D.) in the margin of the second paragraph of the letter under consideration. But as circumstances may occur in which it may be proper and equitable to extend the principle at present in force under this presidency, I am also induced to suggest, that the mere constitution of courts martial should be made subject to such further future arrangements as may appear advisable to the Commander-in-Chief of the respective armies.

I have, &c.
(signed) *William Ogilvie*, Major,
Judge Advocate-general.

Poona, 14 January 1839.

(True copies.)

(signed) *J. P. Willoughby*,
Secretary to Government.

MINUTE by the Honourable *A. Amos*, Esq., 8th February 1839.

Legis. Cons. 20 May 1839. No. 16.

I CIRCULATE the papers recently received from Madras, and still more recently from Bombay, on the subject of the articles of war.

Resolutions of Council seem necessary on the two main points of the trial of Christians, and on flogging. The other suggestions (30 in number) from Madras may be disposed of without difficulty, in manner as I shall propose next week.

On the first point, I suggest the following article:

"All persons born of an European parent, father or mother, and whether such father was legal or reputed, and their descendants professing the Christian religion,

No. II.—Part 2.
Articles of War.

religion, shall not be amenable to these articles; but if belonging to the description mentioned in Art. , shall be subject to the Mutiny Act and articles of war in force from time to time for the better government of the officers and soldiers in the European service of the East India Company." I do not much like adverting to illegitimacy on the face of the article. This article may be also open to criticism, as not providing for the illegitimate son by a native woman; though, on the other hand, providing for such a case might savour of too much subtlety. It is to be observed that, according to English law, a man begetting an illegitimate child is not legally its father. If courts martial would consider him the "father," within the meaning of articles of war, it would be better to leave out the words "whether such father be legal or reputed."

I enclose some observations of Captain Birch, upon the Madras papers, in regard to the matter in question.

The forms (A.) (B.) (C.) (D.) are among the Madras papers.

On the subject of flogging, as well as that of trial of Christians, I have endeavoured to select from the mass of papers such as may be useful for discussing these matters.

8 February 1839. (signed) *A. Amos.*

Legis. Cons.
20 May 1839.
No. 17.

MINUTE by the Honourable *W. W. Bird*, Esq., dated 22 February 1839.

I AM no advocate for the infliction of corporal punishment, and should be glad to see it universally abolished if it could be done without giving rise to still greater evils; but when I perceive that with the strongest desire to abolish it at home, the British Parliament have found it unsafe or impracticable to do so, and that the highest military authorities in this country have recorded their opinion *, that the suspension of the punishment in question, by the Orders in Council of the 24th February 1835, has been productive of the worst consequences to the discipline of the native army, I feel it incumbent on me to pause before concurring in a measure which will render flogging no longer a legal punishment. If such punishment can ever be necessary either for the suppression of mutiny or for the maintenance of discipline, in times of peace or of war, whether within or beyond the frontiers, the proper authorities ought to have the power of legally resorting to it; I think, therefore, that corporal punishment should be continued a part of the new articles, as heretofore, and that the Orders in Council, above referred to, should be modified to such an extent as, on due consideration of the evil consequences complained of, may be deemed necessary and proper.

(signed) *W. W. Bird.*

Legis. Cons.
20 May 1839.
No. 18.

MINUTE by the Honourable Colonel *W. Morison*, President of the Council of India.

THE discontinuance of the power to inflict corporal punishment in the native army was certainly found to be attended with serious inconvenience in the late campaign in Goomsur, as shown both by the Honourable Mr. Russell's Report, and by the papers submitted to this government by his Excellency the Commander-in-Chief of India. The same inconvenience was felt on a more recent occasion, when the 3d Regiment of Madras Cavalry were in a state of insubordination at Oholapoor; and I can hardly conceive a state of things more to be deprecated than that while the native portion of the army of India has been exempted from punishment by the lash, the European portion is still liable to its infliction.

Dated

Under date

On these grounds I should go far in concurring with my colleagues, that the power of inflicting corporal punishment in the native army would be highly desirable, if we could with safety retract the exemption conferred by the General Order of the government of India, dated the 24th February 1835.

It

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* *Vide* Minutes of Sir H. Fane, dated 20 October 1836, 1 November 1838, 6 November 1836. Also, for the sentiments of Sir Peregrine Maitland, *vide* Letter from the Acting Adjutant-general of the Madras army, dated 18 December 1838, referring to a letter from the same department, dated 30 September 1837. Also a Minute from Sir Jasper Nicolls, dated 7 January 1839.

It is true that that Order has not the legal effect of an Act, and that the articles of war which sanction the use of the lash is still legally in force; it may, therefore, be supposed that we might with propriety repeat in the new articles of war the former clause now in abeyance under the operation of the General Order in question, but we could hardly do this without cancelling that Order, a proceeding which would doubtless have a powerful effect on the minds of the native army at large.

The great difficulty consists in going back, which I think cannot be advisable without the occurrence of some emergency to call for the measure; and, from all I can learn, the same grounds for reviving the old rule do not exist alike in the three armies.

I would therefore rather forego the advantages, if there be any, of a general code for the native armies of India, leaving their discipline to be conducted under the existing code of each, respectively, rather than agitate this important question at present, when we have a great army in the field both from Bengal and Bombay, and when there seems some probability of a still more extensive call for the services of the native troops, even beyond sea. Some indeed may be of opinion that this state of affairs affords only stronger grounds for the revival of the power of inflicting corporal punishment. I own I am inclined to a different opinion, and think it would be prudent to consult the home authorities before we revive that power, by the enactment of any new articles of war, for the purpose.

Calcutta, 9 March 1839. (signed) *W. Morison.*

(No. 1,207.—Military Department.)

From Lieutenant-colonel *S. W. Steel*, Secretary to the Government of Fort St. George, to the Secretary to the Government of India, Military Department.

Legis. Cons. 20 May 1839. No. 19.

Sir,

In continuation of a despatch from this department, of the 15th January last, No. 193, I am directed by the Right hon. the Governor in Council to forward herewith, for submission to the Government of India, copy of a letter from the acting register to the Court of Foujdarree Adawlut, dated the 4th March 1839, bringing to notice the inapplicability of the term "Nizamut" to the Court of Foujadrree Adawlut at this presidency in the proposed new articles of war, and suggesting the insertion of the words "and Foujdarree," after "Nizamut."

I have, &c.

(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

Fort St. George, 14 March 1839.

(No. 42.)

From *C. P. Brown*, Esq. Acting Register, Foujdarree Adawlut, Fort St. George, to the Chief Secretary to Government.

Legis. Cons. 20 May 1839. No. 20.

Sir,

Adverting to Article 79 of the proposed new articles of war, draft of which was published in the official gazette of the 7th December last, I am desired to request you will bring to the notice of Government the inapplicability of the term "Nizamut" to the Court of Foujdarree Adawlut at this presidency, and accordingly to suggest, for the consideration of the Right honourable the Governor in Council, the propriety of recommending to the Supreme Government the insertion of the words "and Foujdarree" after "Nizamut," without which it appears to the judges that it will be incompetent to them to give effect to the sentences of transportation referred to in the article now under observation.

Enclosure.

I have, &c.

Foujdarree Adawlut, Register's-office, 4 March 1839. (signed) *C. P. Brown*, Acting Register.

(A true copy.)

(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

Legis. Cons.
20 May 1839.
No. 21.

NOTE by Major-general *Casement*.

I HAVE attentively considered these articles of war, and they appear to me, as a whole, calculated in a great measure to effect the desired object of a discriminative and well-arranged code for the guidance of courts martial in the native army.

Upon the two principal and very important points on which my opinion is desired, I propose to express my sentiments after having intermediately noticed some of the other portions of the articles.

I.—Art. 18. I think this article might be advantageously altered by transposing the words, "as a general court martial shall award," from the place they now occupy to the close of the article. It is of course intended that the several punishments shall be awarded by a court martial; the proposed transposition of the words will make that intention clear.

The "hard labour" contemplated here is, I presume, the usual hard labour in irons on the roads imposed on convicts in the custody of the civil power. I would suggest therefore that the intended punishment be expressed in full, in the words I have underlined, as it is desirable that the punishment to be undergone should be both distinctly understood by the court which passes the sentence and clearly expressed in the terms of such sentence. Besides which, another advantage to be gained by this slight addition to the article will be, that the wording of all sentences under it will be alike, whereas hitherto the practice has been various, one court sentencing to hard labour, another to hard labour in irons, a third to hard labour on the roads, or to labour in irons on the roads; all evidently purporting to be the same description of punishment.

Art. 19 & 71. In these also I would suggest the additional words in the matter of hard labour.

With regard to Article 19, the punishment of dismissal and fine appear to be peremptorily laid down, so that a court martial could not but award those punishments. Yet, in the closing provision of discretionary punishment awardable under Articles 70, 71, there appears a discrepancy which I apprehend will create misconstruction and confusion in practice. The offender being actually dismissed the service, cannot be made to suffer any of the punishments awardable under Article 70, nor some of those provided in Article 71, such as reduction, or degradation of rank, or forfeiture of additional pay while serving. And with regard to the remaining discretionary punishments provided in Article 71, they are inconsistent with those laid down in Article 19 itself; for Article 19 provides imprisonment, with hard labour and solitary confinement, for a term which may extend to three years; whereas Article 71 provides imprisonment for four months, and imprisonment with hard labour, &c. for two months.

I am aware that the specification of imprisonment and its accompaniments was so far necessary in Article 19, that Article 71, which provides that species of punishment, does not apply to commissioned officers, which Article 19 does. But then, by the wording of this article, all classes of offenders are brought under its provisions; and though regarding commissioned officers there may be no difficulty after a little reflection, yet, as regards non-commissioned officers and soldiers, there will, I think, eventually be confusion, which an alteration of the article might obviate.

It appears to me very desirable that offenders under Article 19 should be peremptorily dismissed the service; I would therefore propose to leave that provision in the article as it now stands. The only change I would suggest is the omission of the final clause, "or shall be punished according to the sentence of such court martial, as hereinafter mentioned."

Art. 25. The margin does not correspond with the body of the article.

Art. 36. I observe that a suggestion to insert dismissal is noted opposite this article. I think the proposed insertion an improvement.

Art. 38. The same remark applies to this article.

Art. 44. The word "who" occurring immediately after the word "offender," which in this connexion clearly refers to non-commissioned officers and soldiers only, will lead to the construction that these classes of offenders only are liable to discretionary punishment and to dismissal, leaving commissioned officers to be punished

punished by an award of compensation only. All cavil may be easily avoided by transposing the clauses of the Article. I would suggest that it run thus:—

"Shall be liable to be dismissed the service, or to be punished according to the sentence of a general or other court martial, in manner hereinafter mentioned; and shall further be sentenced to make compensation for the injury, loss, or damage sustained; and such loss, injury, or damage shall, in the case of any non-commissioned officer or soldier, be made good by monthly stoppages, not exceeding half the pay and allowances of the offender."

Art. 45. I would suggest that the words "be sentenced to" be inserted between "shall" and "forfeit," in the commencement of this article, that there may be no doubt as to the authority which is to order the forfeiture.

Art. 47. It strikes me that the words "in manner hereinafter mentioned" have been omitted at the close of this article; at least, their insertion would be an improvement.

Art. 56. I think this article as it stands sufficient for all purposes. The Governor-in-council at Madras appears not to recognise the difficulty suggested by the Commander-in-chief regarding detachments in the Straits.

Art. 58. I do not consider it necessary, but I think it would be an improvement if an insertion were made in this article, regarding the relative rank of native commissioned officers of the higher grades. The rule to which attention was lately called by the Commander of the Forces would derive force were it confirmed, as here proposed, by the authority of these articles. As Judge Advocates are European officers, the insertion of the word "European" before officers appears desirable.

Art. 66. There is no provision in this article for examinations *de bene esse* of witnesses at distant places, whose attendance cannot be obtained, and whose depositions cannot be taken in presence of the prisoner. I would suggest an addition to this effect, as most important and indispensably required.

Art. 71. Instead of "and of all additional pay while serving," I think it would be better to write the word "or," and then to add, "or both these forfeitures." The court may then exercise their discretion in awarding either or both, according to the act committed.

It appears to me necessary to insert in this article a provision to the effect that all offenders sentenced to such imprisonment as renders them incapable of re-admission into the ranks be struck off the strength of the army from the date of confirmation of sentence. I make this suggestion with reference to the point which has before arisen and created discussion, whether soldiers sentenced to imprisonment, with hard labour in irons on the roads, were to be retained in the service, or struck off at once. I would accordingly propose to insert immediately after the word "Provided," these words, "that every soldier sentenced to imprisonment, with hard labour in irons on the roads, shall be struck off the strength of his corps from the date of confirmation of such sentence; and that no soldier," &c. &c.

Art. 79. The first sentence of this article appears to me to impose an unnecessary and very unpleasant task on the Commander-in-chief, of declaring on every occasion of capital sentence the mode in which it shall be carried into execution. I conceive it would be a great improvement to leave it to the court to declare the mode of execution; and for that purpose, that such mode be introduced into this article. I would propose accordingly to alter the commencement of the article thus: "In every sentence of death awarded by a general court martial, the court shall specify that the offender shall suffer death by being hanged by the neck until he be dead, or 'by being shot to death from the mouth of a cannon,' as the court in their discretion shall think expedient; and such sentence, if confirmed, shall be carried into effect accordingly *."

II.—In

* I have omitted the punishment of shooting to death by musketry, because the Hindoo soldiery entertain a very strong objection to carrying such a sentence into execution, pleading that their religious principles are opposed to it. A very striking instance of this feeling occurred a few months ago at Saugor, in the 11th regiment of Native Infantry. I consider it, therefore, unwise to sanction a description of punishment calculated, as this is, to lead to insubordination; the more especially as shooting to death from the mouth of a cannon is, in my opinion, a much more impressive, and consequently a preferable mode of military execution, to that which is usually resorted to in European armies.

No. II.—Part 2.
Articles of War.

II.—In the preceding observations I have remarked or made such suggestions as occurred to me on the articles as they now stand. But on an attentive consideration of the whole code, it appears to me that it is capable of modification, with much advantage, in the way I am about to explain. I annex an abstract of the crimes and punishments in the articles of war as they now stand, by reference to which my observations will be greatly assisted.

Dismissal.

If the suggested addition of dismissal be adopted in Articles 31 to 36 inclusive, and Article 38, (the desirableness of which I have already taken occasion to express,) it will be seen that this punishment is awardable at discretion for the offences stated in Articles from 5 to 18 inclusive, 20 to 22, 31 to 44; besides that, under Articles 19 and 48, the dismissal of the offender is made peremptory; and though dismissal is not expressly laid down for the offences under Articles 23 to 30, 46, 47, yet, as they are made liable to imprisonment with hard labour, which involves dismissal, it follows that for every crime in the code as it stands, except Article 50, dismissal is either actually awardable or involved as a consequence of other punishment.

Discretionary Punishment.

Then with regard to discretionary punishments, under Articles 70, 71. It appears that, with exception of Articles from 5 to 18, which are capital crimes, and Article 50, discretionary punishment is awardable for the whole of the offences contained in the code.

Comparison of Crimes.

Thirdly, with regard to the comparative heinousness of offences. It appears to me that some little changes are desirable in this respect, in order to render offences of similar criminality liable to the same punishments. The crime of quitting a post in time of peace (Article 28), is one of the most serious a man can be guilty of; yet it is excepted from dismissal, and is subjected to discretionary punishment. Hitherto this crime has been severely punished, and very deservedly so, for it will at once be admitted that upon the vigilance of sentries everything depends. In the articles for the European troops this offence is liable to capital punishment at all times, though it is certainly not customary to pass such a sentence upon it in time of peace. I would distinguish between sentries and others.

With regard to "all crimes not capital" (Article 46), there is no article which so frequently comes into operation as this, and the class of offences it contemplates is of very many shades of criminality, from the slightest misbehaviour to the highest insubordination and moral heinousness, short of mutiny on the one hand and disgraceful conduct on the other; and yet it is not possible to sentence the offender to dismissal under this article. This appears to me a defect which it is of much importance to remedy.

Again, with regard to the minor offences in Articles 23 to 30, and Article 47 and 77, direct sentence of dismissal is not awardable; but there is something of contradiction in making these offences liable to imprisonment with labour, which carries dismissal with it.

Upon these several considerations, I would beg to be permitted to propose that the changes I have touched upon should be admitted into these articles; and I believe that the mode in which I would propose to effect this will be found both to improve the code, and to shorten it by avoiding the present repetition of clauses referring to punishments.

Section II. "Of Crimes and Punishments," contains at present four divisions or classes of offence: 1st, crimes punishable with death, transportation, imprisonment or dismissal, comprising the Articles from 5 to 18; 2d, crimes not punishable with death or transportation, comprising the Articles from 19 to 38; 3d, crimes punishable with loss of pay in addition to other punishments, comprising the Articles from 39 to 45; (then follows Article 46, which belongs to no particular class); 4th, crimes incident to courts martial, comprising the Articles from 47 to 50.

These several divisions or classifications of crimes I would propose to retain, adding a fifth and sixth class. But I would transpose some of the articles comprised in these classes. Article 19, I would place under the third class, in the heading of which the word "Fine" might be introduced. Article 28, in one construction

construction of it, I would place in the second class. Article 46, I would make punishable with dismissal, and place it as the proposed fifth class. And the articles from 23 to 30, and 45, I would make to form the fourth class, taking away hard labour as a punishment of the offences under them. But the accompanying schedule of proposed classification will best show what my arrangement would be.

In order to render my meaning still more clearly intelligible, as well as to enable an immediate comparison to be made, I have drawn out a copy of the articles in the order and wording above suggested, and exhibiting such alterations as I would propose, from the second section inclusive.

III. I come now to the two important questions of flogging, and the liability of Christians to these articles of war.

Upon the first point, whether the punishment of flogging shall be restored in the native armies of India by its introduction into these articles, I am decidedly of opinion that there is no occasion for the measure, and that it would, moreover, be found hurtful to the interests of the service were it adopted. I do not consider myself called upon on this occasion to advert to the legality of the Order issued by government in February 1835. It is sufficient that that order did abolish corporal punishment from the date of its promulgation, and that it has been, and is at this moment, implicitly obeyed throughout the three presidencies; and that we have the experience of more than four years, during which the effects of its abolition may be observed.

It must be allowed that simple dismissal from the service was an ineffectual punishment as substituted for flogging by the Government Order in question; and the consequence has been, in some cases, a relaxation of the salutary force of example, by having recourse to minor courts martial to punish desertion and mutinous conduct, under the designation of absence without leave, and insubordination; or an assumption by courts martial of an enlarged jurisdiction quite unauthorised by military law or the Regulations of government. The object of the first of these two procedures was, to obtain the dismissal of the delinquent in the manner least troublesome, minor courts martial having the power to dismiss an offender for absence without leave, or insubordination, just as a general court martial would have dismissed him if charged with desertion, or mutinous conduct; and as the desired result was thus early obtainable, the impropriety of merging great offences under inferior titles, and thus of resorting to inferior tribunals to punish crimes properly cognizable by general court martial only, was allowed to give way to the convenience of dealing with the offender without the formality, the trouble, and the delay of a general court martial. The object of the second procedure was to overawe the evil-disposed by the exhibition of a severe punishment of a new description, "hard labour in irons on the roads," for the graver military crimes.

Now this last-mentioned punishment is already sanctioned and made awardable in these articles of war; and I look upon it not only as an excellent substitute for corporal punishment, but as in itself quite sufficient to work its way as an example, and to make it needless to restore the punishment of flogging. Judging from the information I have received of the excellent effect produced by the passing of a sentence of hard labour in irons on the roads on a sepoy of the Bengal native troops in the army of the Indus, and of the promulgation of that sentence throughout the corps of that army, I am convinced that the same course of proceeding, invariably made known to the native troops by a deliberate and impressive explanation to them of the General Order promulgating the trial, would have the best possible effect. Of the good already resulting from the infliction of hard labour for the more serious military offences, which has been much resorted to during the past year, even though its infliction was not authorised by previous usage or by regulation, I have not the slightest doubt. The punishment has of course taken the culprits entirely by surprise, but awarded as it has been by their own native officers, and adding so severely as it does to the dismissal from the ranks, which it always carries with it, it cannot but have operated, wherever it became known, as a powerful check to that libertine spirit which the abolition of flogging, without substituting for it anything more than mere dismissal, was at first and for some time observed to produce and encourage.

No. II.—Part 2.
Articles of War.

If, however, there be any force in this representation, arising out of the fortuitous adoption of a new course of procedure prompted by the necessity of circumstances, how greatly will its strength, as an argument against the re-introduction of corporal punishment, be augmented, when it is considered that it is owing, as I sincerely believe it is, to the abolition of flogging, that the native army has of late been recruited in the superior manner it has been. My opinion on this subject is formed from information derived from the best sources; and I could here beg to suggest, if the government think it necessary, that it be referred to the Adjutant-general of the army to state, whether it be not the fact, that in completing the recent augmentations, we have enlisted generally a superior class of men, and more Mahomedan recruits of this description; and that our recruiting has been effected with greater facility than was the case before the punishment of flogging was abolished. Although there may be other causes of these remarkable facts, yet my own mind is satisfied that the cause to which I attribute them, is a principal one; and the consideration of the advantage we derive from it powerfully induces me to deprecate the restitution of the punishment of flogging.

It will be observed that in these observations I have wholly abstained from touching upon the probable effects on the minds of the native soldiery of the restoration of the lash; I have not thought it worth while to speculate on possibilities either way, because I am very strongly of opinion, that there is enough both in the good effects on our recruiting of the abolition of flogging, and the good effects on discipline of hard labour on the roads as a military punishment, to show, that even supposing the re-introduction of corporal punishment to be most innocent as regards the feelings of the soldiery, such a measure is not only not required for the due maintenance of discipline, but would also be injurious to the service.

Regarding the second great subject of consideration, the liability of Christians to these articles of war, I am of opinion that the article on that subject in the proposed code is very good as far as it goes; but it appears to me to require an additional provision as indispensable to its complete efficiency. Persons of European descent, and professing Christianity, are made liable to the Mutiny Act and articles of war for the Company's European service, and thereby are subjected to corporal punishment. If there exists any force in the objection so frequently made, that the articles of war for the European and native troops operate inconveniently at stations where both are cantoned, from the circumstance of the former being subject to corporal punishment, and the latter not being so subject, the objection will apply with much greater force to an enactment which renders two classes of the same corps, two descriptions of men of the very same service, so differently punishable. Since the promulgation of the Government Order abolishing corporal punishment, repeated reference has been made on the subject of the drummers and other Christians comprised in a native regiment, and government have invariably replied, that all such individuals are included in the exemption from flogging. I beg to propose, that in conformity with these decisions, and in order to obviate the objection I have pointed out, a clause be added to the article relating to Christians, providing that they shall nevertheless be exempted from corporal punishment by flogging, and that they shall instead thereof be liable to imprisonment, with or without hard labour, in irons on the roads, together with solitary confinement for one month at a time, or three months in one year during such imprisonment, in the same manner and for the same crimes as persons amenable to these articles of war are themselves liable.

Calcutta, 10 April 1839. (signed) *W. Casement*, M. G.

ABSTRACT of CRIMES and PUNISHMENTS in the ARTICLES of WAR, as they now stand.

PUNISHMENTS.	CRIMES.	ARTICLES	REMARKS.
Death. Transportation for life, or any term of years. Imprisonment, with or without hard labour, for life, or any term of years; together with solitary confinement for one month at a time, and not more than three months in a year, of such imprisonment. Dismissal.	Mutiny or sedition - - -	5	
	Striking a superior officer - -	6	
	Desertion - - - - -	7	
	Sleeping on or quitting post in time of war.	8	
	Doing violence to persons bringing provisions in time of war.	9	
	Treacherously making known the watchword.	10	
	False alarms in time of war -	11	
	Holding correspondence with, or giving intelligence to, an enemy.	12	
	Relieving or harbouring an enemy	13	
	Going in search of plunder - -	14	
	Casting away arms in presence of an enemy.	15	
	Misbehaving before an enemy -	16	
	Abandoning a post - - -	17	
	Treacherously suffering an enemy to escape.	18	
	Selling stores, &c. the property of government.	19	- - It is provided in Art. 19, that the offender shall be dismissed the service, and fined to the extent of the loss or damage; and be liable further to imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portions of such term, not exceeding one month at a time, or three months in one year; or discretionary punishment, under Articles 70, 71, as stated in the opposite column.
If an officer (Art. 70): Suspension from rank and pay and allowances for a stated period. To be placed lower in the list of his rank, by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service.	Persuading to desert - - -	20	- - The offender under these Articles is made liable to dismissal, or to the discretionary punishments stated in the opposite column.
	Not joining from leave when corps is going on service.	21	
	Taking bribe for procuring leave, promotion, or other advantage.	22	
	False alarms in time of peace -	23	
	Absent two miles from camp without leave.	24	
If a non-commissioned officer or soldier (Art. 71): Reduction to the ranks. To be placed lower in the list of his rank, with proportionate loss of service. Imprisonment for not exceeding four months. Imprisonment, with hard labour, not exceeding two months; and solitary confinement during imprisonment, one month at a time, and three months in a year. And in addition, forfeiture of pension on discharge, and of additional pay while serving.	Absent from cantonment or camp after tattoo without leave.	25	
	Not repairing to parade in time -	26	
	Quitting company or troop without leave or necessity.	27	
	Quitting guard or post in time of peace without being relieved.	28	
	Releasing prisoner without order, or suffering his escape.	29	
	Not seeing reparation done to ill-treated persons.	30	
	Entertaining deserters - -	31	The offender under these articles, if a commissioned officer, is made liable to dismissal, or the discretionary punishments stated in the opposite column.
	Drunkenness on duty - -	32	
	Violence to sentry - - -	33	
	False returns - - - - -	34	
	False certificates for pension or allowance.	35	
	Disgraceful conduct of commissioned officers.	36	
	Officer breaking arrest - -	37	- - The offender is made liable to dismissal, as well as discretionary punishment.
	Malingering - - - - -	38	- - The offender, if a commissioned officer, is made liable to dismissal, or discretionary punishment.
	Stealing from comrades - -	39	- - The offender is made liable to dismissal, or discretionary punishment. The stolen property is to be restored; or if not found, the offender, if sentenced to dismissal, is to be further fined to the extent of the loss; or in other cases, he is to undergo monthly stoppages, not exceeding half his pay and allowances.

(*continued*)

PUNISHMENTS.	CRIMES.	ARTICLES	REMARKS.
Under Articles 70 and 71, as stated in the preceding page.	Committing waste or spoil - -	40	The offender is made liable to dismissal, or the discretionary punishments; and is further to make compensation in the cases of non-commissioned officers or soldiers, to be recovered by monthly stoppages.
	Officers extorting money or services.	41	
	Non-commissioned officers or soldiers extorting money, &c.	42	
	Non-commissioned officers or soldiers selling or wasting ammunition.	43	
	Non-commissioned officers or soldiers spoiling horse, arms, &c.	44	
	Absence without leave - -	45	- - The offender is to forfeit his pay and allowances for the period of his absence.
	All crimes not capital - -	46	The offender, if an officer, is peremptorily to be dismissed the service, and be further subject to fine to the amount of his arrears of pay and allowances, or to imprisonment, which may extend to three years. Not discretionary punishments. If a non-commissioned officer or soldier, the offender is to be dismissed, and is further liable to discretionary punishment.
	Not obeying summons, or refusing to give evidence.	47	
	False evidence - - - -	48	
Imprisonment not exceeding three months. Discretionary punishments under Articles 70 and 71.	- - Menacing words, gestures, &c. before a court martial.	50	- - According to the offender's condition, and the nature of his offence.
	Frivolous complaints - - -	77	

SCHEDULE of Proposed Alterations in the Articles of War.

PUNISHMENTS.	CRIMES.	Proposed Number of Articles.	Present Number of Articles.	REMARKS.
1st Class:	Crimes punishable with Death, Transportation, Imprisonment, or Dismissal:			
Death. Transportation for life, or any term of years. Imprisonment, with or without hard labour, for life, or any term of years; together with solitary confinement for one month at a time, and not more than three months in a year of such imprisonment. Dismissal.	Mutiny or sedition - - -	5	5	
	Striking a superior - - -	6	6	
	Desertion - - - -	7	7	
	Sleeping on post, or quitting it in time of war.	8	8	
	Doing violence to persons bringing provisions in time of war.	9	9	
	Treacherously making known the watchword.	10	10	
	False alarms in time of war -	11	11	
	Holding correspondence with, or giving intelligence to, an enemy.	12	12	
	Relieving or harbouring an enemy	13	13	
	Going in search of plunder -	14	14	
	Casting away arms, &c. in presence of an enemy.	15	15	
	Misbehaving before an enemy -	16	16	
	Abandoning a post - - -	17	17	
	Treacherously suffering an enemy to escape.	18	18	
2d Class:	Crimes not punishable with Death or Transportation:			
Imprisonment, with or without hard labour, for life or any term of years, together with solitary confinement for one month at a time, and not more than three months in a year of such imprisonment, by general court martial. Dismissal. Imprisonment of both kinds. Forfeiture of pension on discharge, or of additional pay while serving, or both, by any court martial.	Quitting or sleeping on post in time of peace.	19	28	- - It will be observed that this is not precisely Art. 28; the word "guard" is left out, and the words "sleeping on" are added. The crime here contemplated is that of a sentry only.

PUNISHMENTS.	CRIMES.	Proposed Number of Articles.	Present Number of Articles.	REMARKS.
2d Class—*continued.*	Crimes not punishable with Death or Transportation—*continued.*			
Dismissal. If an officer: Suspension from rank and pay and allowances for a stated period. Degradation, with corresponding loss of service. If a non-commissioned officer or soldier: Reduction to the ranks. Degradation, with corresponding loss of service. Imprisonment for four months. Imprisonment, with hard labour, for two months, together with solitary confinement. Besides forfeiture of pension on discharge, or of additional pay while serving, or both.	Persuading to desert - - -	20	20	
	Not joining from leave when corps is going on service.	21	21	
	Taking bribes for procuring leave, promotion, or other advantage.	22	22	
	Entertaining deserters - -	23	31	
	Drunkenness on duty - -	24	32	
	Violence to sentry - - -	25	33	
	False returns - - - -	26	34	
	False certificates for pension or allowance.	27	35	
	Disgraceful conduct of commissioned officers.	28	36	
	Officers' breach of arrest - -	29	37	
	Malingering - - - -	30	38	
3d Class:	Crimes punishable with Fine or Loss of Pay, in addition to other Punishments:			
Peremptory dismissal, and fine to the extent of the loss or damage; and further liable to imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portions of such term, not exceeding one month at a time, or three months in one year.	Selling stores, &c. the property of government.	31	19	
Dismissal. Reduction to the ranks. Degradation, with loss of service. Imprisonment, four months. Imprisonment, with labour, two months, and solitary confinement. Besides forfeiture of pension, or of additional pay, or both.	Stealing from comrades, &c. -	32	39	The stolen property to be restored; or, if not found, the offender, if sentenced to dismissal, is to be further fined to the extent of the loss; if not dismissed, to undergo monthly stoppages, not exceeding half his pay and allowances.
Dismissal, &c. as above - -	Committing waste or spoil - -	33	40	The offender to make compensation. If a non-commissioned officer or soldier, compensation to be made by monthly stoppages.
	Extortion by officers - - -	34	41	
	Extortion by non-commissioned officers and soldiers.	35	42	
	Selling or wasting ammunition -	36	43	
	Spoiling horse, arms, &c. - -	37	44	
4th Class:	Crimes not punishable with Dismissal, or Hard Labour in Irons on the Roads:			
If an officer: Suspension. Degradation, with loss of service. If a non-commissioned officer or soldier: Reduction. Degradation, with loss of service. Imprisonment for four months or less. Forfeiture of pension on discharge, or of additional pay while serving, or both.	False alarms in time of peace -	38	23	
	Absent two miles from camp without leave.	39	24	
	Absent from cantonment or camp without leave after tattoo.	40	25	
	Not repairing to parade in time -	41	26	
	Quitting company or troop without leave or necessity.	42	27	
	Quitting guard or post without leave or relieved.	43	28	-- This is part of the Article, "without leave" being added, and "post" being retained, with reference to the proposed Article 19, in preceding page.
	Releasing prisoner without order, or suffering his escape.	44	29	
	Not seeing reparation done to ill-treated persons.	45	30	
	Absence without leave - -	46	45	-- The offender to forfeit his pay and allowance for the period of absence.

(*continued*)

PUNISHMENTS.	CRIMES.	Proposed Number of Articles.	Present Number of Articles.	REMARKS.
5th CLASS:	Miscellaneous:			
According to the nature of the offence, with any of the punishments previously specified, except death and transportation.	All crimes not capital - -	47	46	
6th CLASS:	Crimes incident to Courts Martial:			
Dismissal. If an officer: Suspension. Degradation, with loss of service. If a non-commissioned officer or soldier: Reduction. Degradation, with loss of service. Imprisonment for four months or less, and solitary confinement. Forfeiture of pension or additional pay, or both.	Not obeying summons, or refusing to give evidence.	48	47	
Peremptory dismissal, and fine to the amount of arrears, or imprisonment for three years. Imprisonment, not exceeding three months.	False evidence - - - -	49	48	
	Menacing, &c. before a court martial.	51	50	- - According to the offender's condition, and the nature of his offence.
If an officer: Suspension. Degradation (as above). If a non-commissioned officer or soldier: Reduction. Degradation (as above). Imprisonment, four months. Forfeiture of pension, or additional pay, or both.	Frivolous complaints - - -	- -	77	

Legis. Cons.
20 May 1839.
No. 22.

SECOND NOTE by Major-general *Casement*.

Note.—In my observations on the proposed articles of war, in a note dated the 10th instant, I made some suggestions regarding the Articles 18, 67, 79, in connexion with other modifications which had occurred to me as improvements. It has been suggested as desirable, that the consideration of these articles, as well as of the two important questions of flogging and Christian amenability, should be separated from the more general remarks upon the articles. I proceed accordingly to submit, as desired, my own opinion on the points alluded to in this separate form.

I.—Art. 18, *Hard Labour*.—It had appeared to me advisable to propose that the words "in irons on the roads" should be inserted after "hard labour," wherever that punishment occurs in this and other articles; I am however informed by Mr. Amos that obstacles exist to the use of the additional words, inasmuch as they would interfere with the instructions lately issued by government to the magistrates, the object of which is to do away with gang labour on the roads altogether. The reasons assigned for not admitting the words "in irons on the roads" are sufficiently strong, but I cannot avoid expressing my regret that it should have been found expedient to divest hard labour of the publicity and the disgrace, which would have had, if my opinion be a correct one, their due influence in impressing the native soldiery with a dread of being sentenced to undergo it. My principal reason for regret arises from the doubt which I entertain whether the punishment of hard labour within the precincts of a gaol will answer the purpose of an efficient substitute for corporal punishment.

II.—Art. 67,

II.—Art. 67, *Bene esse Examination.*—I had remarked regarding this article that it had omitted to provide for the examination of a distant witness when the prisoner could not be present on the occasion, and I proposed the introduction of the words, "whenever that (*i. e.* the presence of the prisoner) is practicable." But it appears that these words are liable to the construction that they authorise the reception of *ex parte* depositions, not subjected to the test of cross-examination by the opposite party. I had certainly not intended to propose so great an innovation on the rules of evidence. If the proposed additional words be taken to sanction the reception of depositions obtained *ex parte* to the detriment of a prisoner (which is the construction suggested by Mr. Amos upon them), equally may they be said to authorise the admission of *ex parte* depositions favourable to the prisoner. To condemn or to acquit upon this species of testimony would be alike inconsistent with justice; but I did not contemplate either of these. It appeared to me (and I think so still) that the article, by not alluding to cases where a prisoner could not be present at the examination, virtually excluded all such cases, which were likely to be by far the most numerous of those in which the depositions of absent witnesses could be required. In attempting to propose a remedy, I felt a good deal of difficulty, because it did not readily occur to me how to meet all supposable cases; and in suggesting the words in question, I conceived that it would occur to those who had to act upon this provision of the article to resort to the long-established legal mode of taking the examinations; and as regards Bengal, to the instructions laid down in the Judge Advocate-general's circular letter, dated 22d November 1830, copy of which I enclose. I had at one time resolved to leave the draft of this part of the article to those better versed in technical forms than I can pretend to be, and probably it would have been better to do so. But having ventured upon the suggestion of the additional words, perhaps I may be permitted now to propose that a further insertion be made, so that the clause may run thus: "His written deposition may be used, provided it shall have been taken in the presence of the prisoner, whenever that is practicable, and in all cases with the knowledge, and subject to the cross-examination of the parties to the trial, and before a magistrate or the commanding officer of the station." I purposely omit the word "consent" as relating to parties, presuming that consent is of no consequence; for if the party likely to be affected by the examination might get rid of it by withholding his consent, justice might often be thereby defeated: but after all, I submit this suggestion with deference to such correction as it may be thought capable of receiving.

III.—Art. 79, *Execution.*—The first sentence of this article appears to me to impose an unnecessary and very unpleasant task on the Commander-in-chief, of declaring on every occasion of capital sentence the mode in which it shall be carried into execution. I conceive it would be a great improvement to leave it to the court to declare the mode of execution, and for that purpose that such mode be introduced into this article; I would propose accordingly to alter the commencement of the article thus: "In every sentence of death awarded by a general court martial, the court shall specify that the offender shall suffer death by being hanged by the neck until he be dead; or 'by being shot to death from the mouth of a cannon,' as the court in their discretion shall think expedient, and such sentence, if confirmed, shall be carried into effect accordingly." I have omitted the punishment of shooting to death by musketry, because the Hindoo soldiery entertain a very strong objection to carrying such a sentence into execution, pleading that their religious principles are opposed to it. A very striking instance of this feeling occurred a few months ago at Saugor, in the 11th regiment of native infantry. I consider it therefore unwise to sanction a description of punishment calculated, as this is, to lead to insubordination; the more especially as shooting to death from the mouth of a cannon is, in my opinion, a much more impressive, and consequently a preferable mode of military execution, to hat which is usually resorted to in European armies.

IV.—*Corporal Punishment.*—Upon the point whether the punishment of flogging shall be resorted to in the native armies of India, by its introduction into these articles, I am decidedly of opinion that there is no occasion for the measure, and that it would, moreover, be found hurtful to the interests of the service were it adopted. I do not consider myself called upon on this occasion to advert to the legality of the Order issued by government in February 1835. It is sufficient that that Order did abolish corporal punishment from the date of its promul-

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Articles of War.

gation, and that it has been, and is at this moment, implicitly obeyed throughout the three presidencies; and that we have the experience of more than four years, during which the effects of its abolition may be observed.

It must be allowed that simple dismissal from the service was an ineffectual punishment as substituted for flogging by the Government Order in question; and the consequence has been in some cases, a relaxation of the salutary force of example, by having recourse to minor courts martial to punish desertion and mutinous conduct, under the designation of absence without leave and insubordination; or an assumption by courts martial of an enlarged jurisdiction, quite unauthorised by military law or the Regulations of government. The object of the first of these two procedures was, to obtain the dismissal of the delinquent in the manner least troublesome; minor courts martial having the power to dismiss an offender for absence without leave or insubordination, just as a general court martial would have dismissed him if charged with desertion or mutinous conduct, and as the desired result was thus easily obtainable, the impropriety of merging great offences under inferior titles, and thus of resorting to inferior tribunals to punish crimes properly cognizable by general court martial only, was allowed to give way to the convenience of dealing with the offender without the formality, the trouble, and the delay, of a general court martial. The object of the second procedure was to overawe the evil-disposed by the exhibition of a severe punishment of a new description, hard labour in irons on the roads, for the graver military crimes.

Now this last-mentioned punishment is already sanctioned, and made awardable in these articles of war, and I look upon it, not only as an excellent substitute for corporal punishment, but is in itself quite sufficient to work its way as an example, and to make it needless to restore the punishment of flogging. Judging from the information I have received of the excellent effect produced by the passing of a sentence of hard labour in irons on the roads on a sepoy of the Bengal native troops in the army of the Indus, and of the promulgation of the sentence throughout the corps of that army, I am convinced that the same course of proceeding invariably made known to the native troops by a deliberate and impressive explanation to them of the General Order promulgating the trial, would have the best possible effect. Of the good already resulting from the infliction of hard labour for the more serious military offences, which has been much resorted to during the past year, even though its infliction was not authorised by previous usage or by regulation, I have not the slightest doubt. The punishment has of course taken the culprits entirely by surprise, but awarded as it has been by their own native officers, and adding so severely as it does to dismissal from the ranks, which it always carries with it, it cannot but have operated wherever it became known as a powerful check to that libertine spirit which the abolition of flogging, without substituting for it anything more than mere dismissal, was at first, and for some time, observed to produce and encourage.

If, however, there be any force in this representation arising out of the fortuitous adoption of a new course of procedure, prompted by the necessity of circumstances, how greatly will its strength as an argument against the re-introduction of corporal punishment be augmented, when it is considered that it is owing, as I sincerely believe it is, to the abolition of flogging that the native army has of late been recruited in the superior manner it has been. My opinion on this subject is formed from information derived from the best sources, and I would here beg to suggest, if the government think it necessary, that it be referred to the Adjutant-general of the army, to state whether it be not the fact, that in completing the recent augmentations, we have enlisted generally a superior class of men, and more Mahomedan recruits of this description, and that our recruiting has been effected with greater facility than was the case before the punishment of flogging was abolished. Although there may be other causes of these remarkable facts, yet my own mind is satisfied that the cause to which I attribute them, is a principal one; and the consideration of the advantage we derive from it, powerfully induces me to deprecate the restitution of the punishment of flogging.

It will be remarked that in these observations, I had wholly abstained from touching upon the probable effects on the minds of the native soldiery of the restoration of the lash. I had not thought it worth while to speculate on possibilities either way, because I am very strongly of opinion, that there is enough both in the good effects on our recruiting of the abolition of flogging, and the good effects on discipline of hard labour on the roads as a military punishment, to show that even supposing the re-introduction of corporal punishment to be most innocent as regards

regards the feelings of the soldiery; such a measure is not only not required for the due maintenance of discipline, but would also be injurious to the service.

My opinion, however, being desired on the probable effects of the restoration of corporal punishment, supposing it otherwise free from objection, I will state that I concur that that measure would not be attended with any dangerous consequences, as far as the feelings of the soldiery are concerned, yet if it be true that we owe our late good recruits to its abolition, they would obviously be inclined to ask for their discharge, and men of their description, especially Mahomedans, would not take service with us.

On the other hand, if hard labour be diminished in severity, it may, as I have before observed, fail as an example, and there are at present no means of substituting other punishment for flogging, whether in camp or in cantonments.

With regard to the European soldiery, I do not imagine that they would trouble themselves to institute any comparison between their own liability to corporal punishment, and the exemption therefrom of the native portion of the army, nor that there is any probability of complaint arising among them from that circumstance.

V.—*Christian Amenability.*—Regarding the second great subject of consideration, the liability of Christians to these articles of war, I am of opinion that the article on that subject in the proposed code is very good, as far as it goes, but it appears to me to require an additional provision as indispensable to its complete efficiency. Persons of European descent and professing Christianity, are made liable to the Mutiny Act and articles of war for the Company's European service, and thereby are subjected to corporal punishment. If there exists any force in the objection so frequently made, that the articles of war for the European and native troops operate inconveniently at stations where both are cantoned, from the circumstance of the former being subject to corporal punishment, and the latter not being so subject, the objection will apply with much greater force to an enactment which renders two classes of the same corps, two descriptions of men of the very same service, so differently punishable. Since the promulgation of the General Order abolishing corporal punishment, repeated reference has been made on the subject of the drummers and other Christians comprised in a native regiment, and government have invariably replied that all individuals are included in the exemption from flogging; I beg to propose that in conformity with these decisions, and in order to obviate the objection I have pointed out, a clause be added to the article relating to Christians, providing that they shall nevertheless be exempted from corporal punishment by flogging, and that they shall instead thereof be liable to imprisonment, with or without hard labour in irons on the roads, together with solitary confinement for one month at a time, or three months in one year, during such imprisonment, in the same manner, and for the same crimes as persons amenable to these articles of war are themselves liable.

Since writing the above, some communications with which I have been favoured by Mr. Amos, have shown me so much difficulty in introducing the provision I have suggested with reference to the restrictions of the Charter Act, that it appears to me necessary to withdraw my proposal; I conceive, however, that the desired object of exempting the Christians from corporal punishment may be effected by a circular from the Commander-in-chief, directing that corporal punishment shall not be sentenced by any court martial, European or native, held in the native army, until the receipt of further instructions. Such a circular would not be of force enough to be considered an infringement of the Acts of Parliament, while yet it would have sufficient force for the purpose contemplated.

(signed) *W. Casement,*
Major-general.

Calcutta, 16 April 1839.

No. II.—Part 2.
Articles of War.

(Circular.)

(No. 2482.)

From *J. Bryant*, Esq. Judge Advocate-general, to the Deputy Judge Advocate-general.

Sir,

I AM directed by the Commander-in-chief to transmit for your attention and guidance, the subjoined orders of government regarding witnesses summoned before a court martial.

Judge Advocate-general's Office,
Head-quarters, on the River,
22 November 1830.

I have, &c.
(signed) *J. Bryant*,
Judge Advocate-general.

Orders of Government.

1. AT all courts martial, when the list of witnesses given by the party to be tried, embraces individuals whose attendance, from being employed on important public duties, or being at a distance, or from any other impediment it is difficult to obtain, it shall be the duty of the Judge Advocate to inquire into the nature of the evidence so required.

2. In cases where the defendant refuses to disclose the nature of his proposed examination of a witness whose attendance cannot be obtained without great inconvenience to the individual, the expense of procuring such attendance must attach to defendant, but on satisfying the government after trial that the personal attendance of such witness was essentially necessary to his cause, government will take into consideration the reimbursement of the expenses.

3. When the witness is situated as above described, and the defendant discloses the nature of the evidence required, the Judge Advocate shall propose to the party for trial an examination *de bene esse*, that is, interrogatories by the parties transmitted to, and the answers taken before a justice of the peace.

4. In the event of difficulties as above described existing to the detention of a witness, the Judge Advocate shall propose the evidence required being taken in presence of both parties before a magistrate, and it is understood that the necessity of the above cases being established, and the court martial being satisfied that the consent of both parties had been obtained, such evidence may be legally received on the trial.

(signed) *J. Bryant*,
Judge Advocate-general.

Legis. Cons.
20 May 1839.
No. 23.

MINUTE by the Honourable *A. Amos*, Esq., dated the 18th April 1839.

I HAVE had several communications with General Casement upon the subject of the articles of war. The General has minutely attended to all the points, including those suggested by the Madras military authorities, and I have adopted various improvements which the General has pointed out.

From what I know of the sentiments of the members of Council in regard to the principles and details of the measure, I conceive that they will not find any matters requiring their particular attention, excepting the following five, discussed in their order in General Casement's second note:—

1. Hard Labour on the Roads in Irons.
2. *De bene esse* Depositions.
3. Execution of the Sentence of Death.
4. Flogging.
5. Christian Amenability.

1. *Hard Labour on the Roads in Irons.*—General Casement proposes to add the words "on the roads in irons" wherever the words "hard labour" occur.

I object, firstly, because "hard labour" will include "hard labour in irons on the roads" wherever that species of punishment is permitted by the general criminal law of the country. The Acts all use the terms "hard labour" only. The sentences, *e. g.* by the Supreme Court are all passed in those terms. If the same

object

object can be obtained by the use of words sounding less rigorous, I think it is desirable, especially as the matter may be canvassed by the English public, to whom it will appear (rightly according to the terms, but wrongly in fact) that soldiers are subjected to a severer species of hard labour than persons not military convicted of the worst crimes. It sounds, moreover, severe to make the irons a part of the punishment instead of merely using them, when necessary, to prevent escape. Secondly, "hard labour in irons on the roads" would not in legal effect be a punishment equally extensive with "hard labour;" it might be held not to extend to hard labour in prison.

Lastly, with reference to the Prison Discipline Report, and our resolutions thereon, and the orders respecting gang-labour now under discussion, it does not seem advisable to enact in terms the punishment of labour "in irons on the roads," where the whole effect of such terms can be attained by using the expression "hard labour," which runs through our whole criminal law.

2. *De bene esse Depositions.*—The clause relating to them is not to be found in any other articles of war; it was suggested by Mr. Robertson, from a part in the Duke of Wellington's despatches. No doubt, in a great many cases, the witness's presence cannot be procured; but I think that, in a new clause especially, it would not be expedient to sanction the admission of any evidence against a prisoner which has not been taken in his presence; any such evidence must be open to serious objections, as being contrary to the first principles of the English law of evidence, and in practice it might often lead to the admission of proofs which had not undergone the ordinary and recognised tests, even where it had been practicable to bring the prisoner and witness together, though, perhaps, at some small inconvenience or slight expense. The clause is, perhaps, chiefly applicable to any army in its march through a foreign country.

3. *Execution of Sentence of Death.*—The questions upon this article are chiefly of a military nature; it may, however, be said that it has not been usual in articles of war to enter into the particulars of the execution of sentence of death, and that we are unnecessarily provoking inquiry upon an exciting subject; but, on the whole, I am disposed to adopt General Casement's amendment.

4. *Flogging.*—I have only to refer to General Casement's remarks, having no new information or suggestion to offer.

5. *Christian Amenability.*—I think it will be best to coincide with General Casement's view, upon his reconsideration of his first remarks.

Christians of European birth or descent, if not already subject to 4 Geo. 4, c. 81, may, I conceive, be made so by these articles, provided they be not British subjects born in Europe, or their children; but if any of them are subject to 4 Geo. 4, c. 81, we are prohibited from varying their liability under that Act by our articles.

Vainly, in regard to courts of request, have the military authorities, on repeated occasions, beseeched government to declare who were subject to 4 Geo. 4, c. 81; and the Bengal Regulations, in attempting to define, have rendered this subject more obscure.

British subjects born in Europe, or their children, would, I conceive, be liable to the 4 Geo. 4, c. 81, and therefore we could not except them from corporal punishment; and we should have great difficulty in defining, upon the face of our articles, and greater difficulties might occur in practice, if we were to attempt to mark out the "Christians of European birth or descent" whom we were at liberty to exempt from corporal punishment. The least objectionable expression would be "natives of European descent, being Christian;" but there are various objections even to this expression.

An order, as suggested by General Casement, would seem judicious, as it would appear to be inexpedient that in a regiment composed of Hindoos, Musselmen, and Christians, the Christians alone should be subject to flogging, and that even a person of European descent might get exempted from flogging, if he renounced Christianity. The article, in its present terms, embraces persons already liable to 4 Geo. 4, c. 81; as to them it is merely declaratory; as to the other persons included, perhaps there is no distinction between them and natives not of European descent, or between them and persons who are not Christians, more important than that they are subject to flogging; nevertheless, I think the article cannot be altered without falling into greater difficulties.

(signed) *A. Amos.*

Legis. Cons. 20 May 1839. No. 24.

MINUTE by the Honourable *T. C. Robertson*, Esq., dated the 4th May 1839.

General Sir *W. Casement*'s Notes upon the Articles of War.

I THINK that General Casement attaches more importance than is necessary to the insertion of the words "hard labour on the roads" in the sentence. Such labour, under such circumstances, is in our courts always understood to be comprised in the words "mushuyut" or "mihuntshadeed," one or other of which terms would, I conclude, be used by the members of a native court martial to express their meaning.

On the subject of military execution I entirely agree with General Casement.

Beside the objections stated by him to imposing upon the Commander-in-chief the painful task of determining by what mode of death a criminal shall die, it strikes me as unwise to leave it in the power of any individual to constrain Hindoos to discharge what, under some circumstances, as, for instance, when the culprit is a Bramin, must be to them a more than merely revolting duty.

On the subject of corporal punishment, I can only hope that the opinion expressed by General Casement may be confirmed by a majority of the few to whom, in my Minute of the 7th January, I have suggested that reference may be made. How necessary it is that such a reference should precede our final decision may be seen from that passage in General Casement's note, in which a "libertine spirit" is stated to have been at first "produced and encouraged by the abolition of flogging," to which it is rather inferred than insisted that the recent substitution of "labour on the roads and irons" has operated as a "powerful check."

With regard to what is called Christian amenability, we may at least provide that no sentence of corporal punishment shall be carried into effect, for so long as the rest of the force is exempted, upon individuals of the class to which this question applies.

I regret extremely to find that the reception in evidence of written depositions may not, even in the case supposed, that of an army in actual movement, in the opinion of Mr. Amos and General Casement, be permitted.

(signed) *T. C. Robertson.*

Legis. Cons. 20 May 1839. No. 25.

MINUTE by the Honourable *W. W. Bird*, Esq., dated the 16th May 1839.

1. THE only point on which I consider it necessary to make any further observation has reference to corporal punishment.

2. Major-general Sir William Casement, than whom there are few, if any, in the Bengal army better qualified to form a correct judgment, declares himself to be decidedly of opinion that there is no occasion to revert to the measure, and that, if adopted, it would be found prejudicial to the interests of the service. He admits, however, that simple dismissal from the service was an ineffectual punishment for flogging, and that the consequence has been, in some cases, a relaxation of the salutary force of example, by having recourse to minor courts martial for the punishment of desertion and mutinous conduct, under the designation of absence without leave and insubordination, or an assumption by courts martial of an enlarged jurisdiction, quite unauthorized by military law or the regulations of government; but he thinks that the punishment of "hard labour in irons on the roads," proposed to be made available by the new articles of war, would be an effectual substitute, it having been already attended with the best effect in a case wherein it was resorted to by the Army of the Indus; and he has no doubt that, adding so severely as it does to the punishment of dismissal from the ranks, which it always carries with it, it must operate, whenever resorted to, as a powerful check to that libertine spirit which the abolition of flogging, without substituting for it anything more than mere dismissal, was at first and for some time observed to produce and encourage.

3. I am no advocate, as already stated in my former Minute, for the infliction of corporal punishment, and if the punishment of hard labour in irons on the roads should be found, on experience, a sufficient substitute, I will most cordially join in its abolition; but time, I think, should be allowed to admit of this fact being satisfactorily ascertained, especially as Sir William Casement states that, if it fails,

there

there exist at present no means of substituting other punishment for flogging, either in camp or in cantonments.

4. The Major-general further states it to be his sincere belief, founded on information obtained from the best sources, that it is owing to the abolition of flogging that in completing the recent augmentations the native army was recruited with so much facility, and that there have been enlisted generally a more superior class of men, especially Mahomedans, than was ever done before. If this be the case, and it should, I think, be inquired into, it will of course be a strong additional reason for the discontinuance of the punishment in question.

On the other points under consideration, I agree generally with Mr. Amos.

(signed) *W. W. Bird.*

AMENDED DRAFT of Articles of War, dated the 20th May 1839.

Legis. Cons. 20 May 1839. No. 26.

ARTICLES of War for the Government of the Native Officers and Soldiers in the Military Service of the Honourable the East India Company, and for the Administration of Justice by Courts Martial.

SECTION I.

Of Enlisting and Discharges.

Art. 1. Every recruit, prior to being enrolled in his regiment, shall have the articles of war read and explained to him; after which a declaration shall be made to him by the officer commanding, in front of the regiment or corps, in presence of the native officers and soldiers, and an oath shall then be required from him, according to the forms of his religion, in front of the colours, such declaration and oath to be the like as are now used in the respective presidencies.

Articles of war and declaration to be read, and oath to be administered to all recruits.

Art. 2. No commissioned officers shall be dismissed, excepting by the sentence of a general court martial. No non-commissioned officers shall be discharged, except by the sentence of a court martial. Soldiers may be discharged the service by order of the officer commanding in chief at the presidency to which they may belong, or by sentence of a court martial. Every such dismissal or discharge shall include forfeiture of all claim to pension; provided that no sentence of discharge awarded by a court martial inferior to general shall be carried into effect without the concurrence of the general or other officer commanding the division, district, or field-force with which the prisoner may be serving; provided also, that the Governor-general in Council, in his executive capacity, and the Governor in Council of any presidency to which a commissioned or non-commissioned officer or soldier may belong, shall have power to order his dismissal or discharge.

Commissioned officers, non-commissioned officers, and soldiers, by what authority to be dismissed the service.

Art 3. All non-commissioned officers and soldiers discharged the service shall be furnished by the commanding officer of the regiment with a discharge certificate, made out in the vernacular language of the individual discharged, with an English translation, expressing the authority for or cause of such discharge, and the period of their entire service in the army.

Non-commissioned officers and soldiers to be furnished with a discharge certificate.

Art. 4. No non-commissioned officer or soldier shall enlist himself in any other regiment without a regular discharge from his former regiment, under the penalty of being reputed a deserter and suffering accordingly.

Penalty of enlisting in other regiments, &c. without a discharge from former regiment.

SECTION II.

Crimes and Punishments:

Crimes punishable with Death, Transportation, Imprisonment, or Dismissal.

Art. 5. Any officer, non-commissioned officer, or soldier, who shall begin, excite, cause, or join in any mutiny or sedition in the regiment or corps to which he belongs, or in any other corps or regiment in the service, or serving as allies, on any pretence whatever; or who, being present at any mutiny or sedition, shall not use his utmost endeavours to suppress it; or who, coming to the knowledge of any mutiny, intended mutiny, or concealed combination against the state, who shall not without delay give information thereof to his commanding officer; or,

Penalty of mutiny.

Penalty of striking or drawing any weapon against a superior officer, &c.

Art. 6. Who shall strike his superior officer, or shall draw or offer to draw, or lift up any weapon, or use or offer any violence against him, or shall disobey any lawful command of his superior officer; or,

Penalty of desertion.

Art. 7. Who shall be guilty of desertion; or,

Penalty of sleeping on his post, or of quitting it before he is relieved, in time of war or alarm.

Art. 8. Who, in time of war or alarm, shall sleep upon his post, or shall leave it before regularly relieved; or,

Penalty of doing violence to any person who brings provisions to the camp or quarters, in time of war or alarm.

Art. 9. Who, in time of war or alarm, shall do violence to any person bringing provisions or other necessaries to the cantonment or camp of the troops employed; or shall force a safeguard; or,

Penalty of making known the watchword.

Art. 10. Who shall treacherously make known the watchword to any person not entitled to receive it according to the rules and discipline of war; or,

Penalty of making false alarms in camp or quarters.

Art. 11. Who, in time of war, shall by discharging of fire-arms, drawing of swords, beating drums, making signals, using swords, or by any means whatsoever, intentionally occasion false alarms in action, camp, garrison, or quarters; or,

Penalty of holding correspondence with, or giving intelligence to the enemy.

Art. 12. Who shall be convicted of holding correspondence with or giving intelligence to the enemy, or any person in rebellion, either directly or indirectly, or coming to the knowledge of such correspondence shall not discover it immediately to the commanding officer; or,

Penalty of relieving or harbouring an enemy.

Art. 13. Who shall directly or indirectly assist or relieve the enemy, or persons in rebellion, with money, victuals, or ammunition, or shall knowingly harbour or protect an enemy or rebel; or,

Penalty of going in search of plunder.

Art. 14. Who shall leave his commanding officer, or his post or company, in time of action, or go in search of plunder; or,

Penalty of casting away arms or ammunition.

Art. 15. Who shall in presence of an enemy cast away his arms or ammunition; or,

Penalty of misbehaving before the enemy.

Art. 16. Who shall misbehave himself before the enemy, or use means to induce others so to misbehave; or,

Penalty of shamefully abandoning, &c. to the enemy, any garrison, fortress, &c.

Art. 17. Who shall shamefully abandon, or deliver up to the enemy any garrison, fortress, post, or guard committed to his charge, or which it was his duty to defend, or who shall use means to induce any other officer, non-commissioned officer, or soldier, so to abandon or deliver up any such garrison, fortress, post, or guard; or,

Penalty of treacherously suffering an enemy to escape.

Art. 18. Who shall treacherously release, wilfully aid, or connive at the escape of any enemy or rebel placed as a prisoner under his charge, shall suffer death or transportation for life or any term of years, or imprisonment with or without hard labour for life, or any term of years, together with solitary confinement for any portion or portions of the term of imprisonment, not exceeding one month at a time, or three months in the space of one year, or be dismissed the service, as a general court martial shall award.

Crimes not punishable with Death or Transportation.

Penalty of sleeping on his post, or of quitting it before he is relieved, in time of peace.

Art. 19. Any sentry who in time of peace shall sleep upon his post, or shall leave it before regularly relieved, shall be liable to suffer imprisonment, with or without hard labour, for life, or for any term of years, together with solitary confinement for any portion or portions of the term of imprisonment, not exceeding one month at a time, or three months in the space of one year, as a general court martial shall award; or be punished by the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty of persuading any one to desert

Art. 20. Any officer, non-commissioned officer, or soldier who shall be convicted of having advised or persuaded any other officer, non-commissioned officer, or soldier to desert, or having connived at such desertion; or,

Art. 21. Who being on leave of absence shall have received information from the head-quarters of his regiment, or from other competent authority, that his regiment has been ordered on service, and shall not rejoin without delay; or, — Penalty of not joining from leave without delay when corps is ordered on service.

Art. 22. Who directly or indirectly shall require or accept a bribe, present, or gratification on the pretence of procuring leave of absence, promotion, or any other advantage or indulgence for any officer, non-commissioned officer, or soldier; or, — Penalty of taking a bribe for procuring leave, &c.

Art. 23. Who shall knowingly enlist a deserter, or shall not, after his being discovered, immediately cause him to be confined, and give notice thereof to the nearest commissioned officer; or, — Penalty for entertaining and not confining deserters.

Art. 24. Who shall be drunk on duty; or, — Penalty of drunkenness on duty.

Art. 25. Who shall strike or do violence to a sentry; or, — Penalty of striking or doing violence to a sentry.

Art. 26. Who shall knowingly make a false return or report to any of his superior officers authorized to call for a return or report of the state of the men under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, or of which he may otherwise have charge; or, — Penalty of false returns or reports.

Art. 27. Who shall obtain or attempt to obtain for himself, or any officer or soldier, or any other person whatsoever, any pension or allowance, by any false statement, certificate, or document, or by the omission of the true statement; or, — Penalty of false certificates, &c. to obtain pension, &c.

Art. 28. Who shall be guilty of feigning, or producing disease or infirmity; or, — Penalty of malingering, &c.

Art. 29. Who, being an officer, shall behave in a manner unbecoming the character of an officer, the fact or facts whereon the charge is grounded being clearly specified; or, — Penalty of disgraceful conduct of commissioned officers.

Art. 30. Who, being an officer under arrest, shall leave his confinement before he is set at liberty by competent authority, shall be punished by the sentence of a general or other court martial in manner hereinafter mentioned. — Penalty of breach of arrest.

Crimes Punishable with Fine or loss of Pay, in addition to other Punishments.

Art. 31. Any officer, non-commissioned officer, or soldier, who shall embezzle or fraudulently misapply any money entrusted to him on the public account, or for any military purpose, or any provisions, forage, arms, clothing, ammunition, or military stores of whatever kind or description, the property of government, entrusted to his charge; or who shall be concerned in, or connive at, any such embezzlement, or fraudulent misapplication, shall on conviction thereof before a general court martial, be dismissed the service, and fined to the extent of the loss or damage, and be further liable to suffer imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portion or portions of such term, not exceeding one month at a time, or three months in the space of one year. — Penalty of selling stores, &c. the property of government.

Art. 32. Any non-commissioned officer or soldier who shall steal money or goods, the property of a comrade or of a military officer, or other person serving with or attached to the army, or shall commit any petty offence of a fraudulent nature, to the injury of or with intent to injure any person, civil or military, shall be punished according to the sentence of a general or other court martial in manner hereinafter mentioned, and the property stolen or fraudulently obtained shall be restored to the owner; or, if the property cannot be found, the offender shall, if dismissed the service, be further fined to the extent of the loss or damage. In all other cases the loss or damage shall be made good by monthly stoppage, not exceeding half the pay and allowances of the offender. — Penalty of stealing from a comrade, &c.

Art. 33. Any officer, non-commissioned officer, or soldier, who shall, without orders, commit waste or plunder, either in towns or villages, gardens or fields, or shall injure or destroy the property, or shall do violence on the person of any of the inhabitants; or, — Penalty of committing any waste or spoil in towns, villages, gardens, &c.

Penalty of extorting money, &c. as fees, duties, or on any pretence whatsoever.

Art. 34. Any officer commanding at any post, or on the march, who shall, on any pretence whatever, illegally, and against the will of the parties, extort money or other property, or services; or,

Penalty of a non-commissioned officer or soldier extorting money, &c. as fees, on any pretence whatsoever.

Art. 35. Any non-commissioned officer or soldier at any post, or on the march, who shall extort money or property of any description as fees or duties, or on any pretence whatever; or shall without authority exact from villagers or others, carriage, porterage, or provisions; or,

Penalty of selling or wasting ammunition delivered out.

Art. 36. Who shall sell, lose, or designedly, or through neglect, waste the ammunition delivered out to him; or,

Penalty of spoiling, &c. horse, arms, &c.

Art. 37. Who shall sell, or designedly or through neglect lose or injure his horse, or spoil his arms, clothes, accoutrements, or regimental necessaries, or any of the above articles entrusted or belonging to any other non-commissioned officer or soldier, shall be punished by the sentence of a general or other court martial in manner hereinafter mentioned, and shall further be sentenced by the court to make compensation for the injury, loss, or damage sustained; and such loss, injury, or damage shall in the case of any non-commissioned officer or soldier be made good by monthly stoppages, not exceeding half the pay and allowances of the offender.

Crimes not Punishable with Dismissal, or Imprisonment, with Labour.

Penalty of occasioning false alarms in time of peace.

Art. 38. Any officer, non-commissioned officer, or soldier, who in time of peace shall, by discharging fire-arms, drawing swords, beating drums, or by any other means whatever, intentionally occasion false alarms in camp, garrison, or quarters; or,

Penalty of being two miles from camp without leave.

Art. 39. Who shall be found two miles from the camp without leave; or,

Penalty of absence after hours out of camp or quarters.

Art 40. Who shall be absent from his cantonment after tattoo, or from camp after retreat beating, without leave from his superior officer; or,

Penalty of not repairing at the time fixed to the parade, &c.

Art. 41. Who shall fail to repair at the time fixed to the parade or place appointed, if not prevented by sickness or some other sufficient cause; or,

Penalty of quitting company or troop without leave.

Art. 42. Who shall without urgent necessity, or without leave of his superior officer, quit his company or troop; or,

Penalty of quitting guard or post without being relieved, &c.

Art. 43. Who shall quit his guard or post in time of peace, without being regularly dismissed or relieved, or without leave; or,

Penalty of releasing a prisoner without orders, or suffering him to escape.

Art. 44. Who being in command of a guard, shall refuse to receive any prisoner duly committed to his charge, or shall without proper authority release any prisoner, or shall suffer through carelessness or neglect any prisoner to escape; or,

Penalty of not seeing reparation done to persons ill-treated, &c.

Art. 45. Who being in command at any post, or on the march, on complaint made to him of any person under his command beating, or otherwise ill-treating any person, or extorting from him more than he is obliged to furnish by authority, or disturbing fairs or markets, or committing any kind of riot, shall not see reparation done to the party or parties injured, or if that be impracticable, shall not report the same to his superior officer; or,

Penalty of being absent without leave, and of overstaying the period of leave.

Art. 46. Who shall absent himself without leave, or shall without sufficient cause overstay the period for which leave may have been granted him, shall be punished by the sentence of a general or other court martial in manner hereinafter mentioned; provided that such offender shall not be liable to be sentenced to be dismissed the service, nor to suffer imprisonment with hard labour; and that such offender being convicted of absence without leave, or of overstaying his leave, shall further be sentenced by the court to forfeit his pay and allowances for the time he may have been so irregularly absent.

Miscellaneous Crimes.

Art. 47. All crimes not capital, and all disorders or neglects which officers, non-commissioned officers, or soldiers may be guilty of to the prejudice of good order and military discipline, though not specified in these Articles, are to be taken cognizance of by courts martial, and to be punished according to the sentence of a general or other court martial, in manner hereinafter mentioned.

Crimes incident to Courts Martial.

Art. 48. Any person amenable to these articles of war, who, when duly summoned before a court martial shall not attend, or shall refuse to be sworn, or to give evidence upon solemn affirmation or declaration, as hereinafter is mentioned, shall be punished according to the sentence of the same or another general or inferior court martial, in manner hereinafter mentioned; provided that such offender shall not be liable to be sentenced to suffer imprisonment with hard labour. Penalty of not attending when summoned as a witness before a court martial, or of refusing to be sworn.

Art. 49. Any officer, non-commissioned officer, or soldier who shall be found guilty of wilfully and knowingly giving false evidence on oath, or solemn affirmation or declaration, on any trial before any general or other court martial, or any military court entitled to administer an oath, shall be dismissed the service, and be further subject, according to the sentence of a general court martial, to fine, to the amount of his arrears of pay and allowances, or to imprisonment, which may extend to three years. Penalty of perjury.

Art. 50. Any person not amenable to these articles of war, having been summoned upon any court martial, and refusing and neglecting to attend, or who attending shall give such testimony as, if given in a civil court, would render him guilty of perjury, shall be liable to trial in a civil court, and on conviction, shall suffer such penalties as may be in force against a prisoner offending in like manner in any civil court. How punished for not attending, or for perjury.

Art. 51. Any person using menacing words, signs, or gestures in the presence of a court martial then sitting, or causing any disorder or riot so as to disturb their proceedings, shall be punished according to the condition of the offender, and the nature and degree of his offence, by the sentence of the same or another court martial, with imprisonment not exceeding three months, or of a civil court in like manner as if the same offence had been committed before such court. Penalty of using menacing words, gestures, &c. before a court martial.

Section III.

Administration of Justice.

Art. 52. The Commander-in-chief or commanding officer of the forces for the time being at the presidency to which the prisoner to be tried may belong, and officers commanding divisions, districts, field forces, or independent garrisons under such presidency, are respectively empowered to convene courts martial for the trial and punishment of all offences specified in these articles. The sentences of every such court martial shall be subject to the confirmation of the Commander-in-chief, or commanding officer of the forces aforesaid, who shall have power to mitigate or remit the punishments awarded, according to discretion. Courts martial, by whom convened; sentences confirmed or mitigated.

Art. 53. In cases wherein sentence of death has been awarded by a court martial, the Commander-in-chief, or the officer commanding the forces for the time being at the presidency to which the prisoner may belong, may, instead of causing such sentence to be carried into effect, order the offender to be transported for life, or a certain term of years, or to be imprisoned with or without hard labour for life, or a certain term of years, and with or without such solitary confinement as aforesaid, as to the said officer commanding in chief may seem meet. Sentence of death may be commuted to transportation, &c.

Art. 54. A general court martial shall not consist of less than 13 commissioned officers, unless it be held out of the Honourable Company's territories, where a general court martial may consist of seven commissioned officers, if a greater number cannot, in the judgment of the convening officer, be conveniently assembled. General courts martial, how constituted; not ordinarily to consist of less than 13 commissioned officers; when may consist of seven.

No sentence to be put in execution until confirmed.

Art. 55. No sentence of a general court martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-chief or commanding officer of the forces for the time being at the presidency to which the prisoner may belong, and until he shall have confirmed the same, and have signified his directions thereon, except in places out of the British territories, where the sentence shall be confirmed as hereinafter directed.

Courts martial, not being general, by whom appointed.

Sentence to be confirmed by the commanding officer previous to execution.

Art. 56. The commanding officer of every station, cantonment, garrison, detachment, or regiment, may assemble courts martial, not being general courts martial, according to the nature of his command, for the trial and punishment of all offences specified in these articles, where general courts martial have not exclusive jurisdiction. No sentence awarded by such court martial shall be carried into effect until the commanding officer as aforesaid shall have confirmed it; provided that no sentence awarded by such courts martial against any native medical officer shall be carried into effect until it shall have been confirmed by the Commander-in-chief or commanding officer of the forces for the time being at the presidency in which the court is assembled.

No officer commanding less than four companies to confirm the sentence of a court martial.

Art. 57. No officer or detached command of less than four troops or companies, or detachments numerically equal to four companies, shall carry into execution any punishment awarded by a court martial, held by his order, until the sentence shall have been confirmed by the officer commanding the regiment to which the offender belongs, except when an immediate example is necessary.

Courts martial not general, how constituted; not to consist of less than five officers ordinarily.

Art. 58. Courts martial not being general, shall not consist of less than five commissioned officers, excepting where that number cannot conveniently be assembled, when three shall be sufficient, of whom the senior officer shall be president.

Senior officer to preside at general courts martial.

Judge Advocate.

Art. 59. At all general courts martial the senior officer shall sit as president without being so appointed by warrant: provided that all subadar majors are to take precedence according to the dates of their commissions, and above all native officers holding the rank of subadar or jummadar, and that surdar bahadoors shall rank only according to their respective commissions of subadar major, subadar, or jemadar; and a Judge Advocate, or an European officer of not less than 10 years' service, shall be appointed to conduct the proceedings.

At all inferior courts martial an European officer to superintend.

Art. 60. At all courts martial inferior to general, an European officer, of not less than seven years' standing in the service, except in cases where no officer of that standing may be available, or the adjutant of the regiment, shall be appointed to conduct the proceedings.

Interpreter to be appointed.

Art. 61. An interpreter, if practicable, shall be appointed to all courts martial.

Revision of finding or sentence.

Art. 62. No sentence or finding of a court martial shall be revised more than once. For the purpose of such revision, the president and all the members shall be convened. But if the president or other members should be unavoidably absent, the remaining members may be convened, provided they are not fewer than the smallest legal number: when all the same members do not meet, the circumstances are to be duly certified on the face of the proceedings.

Forms of Proceeding.

Hours of sitting.

Art. 63. Trials by courts martial may be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

Oath to be taken by the interpreter.

Art. 64. On the assembly of the court, the Judge Advocate or superintendending European officer, shall administer to the interpreter the following oath:—

Oath.

"I, *A. B.* swear that I will faithfully interpret and translate the proceedings of the court, and that I will not divulge the sentence until it shall have been approved or published, and further, that I will not disclose or discover the vote

or

or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or court martial, in due course of law.

"So help me God."

In case of the unavoidable absence of an interpreter, the European superintending officer of a court martial inferior to general, shall take the oath prescribed for the interpreter. The Judge Advocate or superintending officer shall then cause the following declaration to be made by each member on oath, according to the forms of his religion:— Oath by members of the court.

"I, *A. B.* do swear that I will duly administer justice according to the articles of war, without partiality, favour, or affection; and if any doubt shall arise, then according to my conscience, the best of my understanding, and the custom of war in the like cases, and that I will not divulge the sentence of the court until it shall be approved of or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court martial, in due course of law."

The following oath shall then be administered by the interpreter to the Judge Advocate or superintending officer:—

"I, *A. B.* do swear that I will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof by a court of justice, or a court martial, in due course of law. Oath to be taken by Judge Advocate and superintending officer.

"So help me God."

Provided, that it shall be necessary to re-administer these oaths on the commencement of fresh trials before the same court.

Summoning and Examination of Witnesses.

Art. 65. In all cases where persons required as witnesses before a court martial may not be amenable to these articles, the Judge Advocate or commanding officer shall transmit to the magistrate within whose jurisdiction the witness may reside, his summons for the attendance of such person, and the magistrate shall cause the witness to be duly summoned. Persons not amenable to military authority how summoned.

Art. 66. All persons who give evidence at a court martial are to be examined on oath, according to the forms of their respective religions; or if they shall object on the ground of any religious scruple to take an oath, they may, at the discretion of the court, be permitted to make their solemn affirmation or declaration in such manner as is hereinafter mentioned. Witness to be examined on oath or solemn declaration.

Art. 67. In the case of a witness of the Hindoo persuasion being exempted from taking an oath, the following declaration shall be subscribed by him previously to his deposition:— Hindoos exempted from taking an oath, to subscribe a declaration.

"I will faithfully answer according to the truth such questions as may be put to me by the court, in the cause now before the court. I will not declare anything not warranted by the truth; if I declare anything not warranted by the truth, I shall be deserving of punishment from Almighty God." Declaration.

And in the case of a Mussulman witness so exempted, the following declaration shall be subscribed by him previously to his deposition:— Mussulmans exempted from taking an oath, to subscribe a declaration.

"I sincerely promise and solemnly declare, in the presence of Almighty God, that I will faithfully and without partiality answer, according to the truth, any questions that may be put to me by the court, respecting the cause now before the court." Declaration.

After the witness, whether Hindoo or Mussulman, has given his deposition, he is to subscribe the following declaration:—

"I solemnly declare, in the presence of Almighty God, that I have faithfully, and without partiality, answered according to the truth, the questions put to me by the court, respecting the cause now before the court." Declaration.

In cases in which a witness is dead, or his attendance cannot be obtained without great inconvenience, his written deposition may be used, provided it shall have been taken in the presence of the prisoner, and before a magistrate or the officer commanding the station.

Manner of Voting.

Members in voting, to begin with the youngest, &c.

Art. 68. All the members of a court martial are to preserve order, and in giving their votes upon all matters are to begin with the youngest; and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of members present, provided the number of members present be not less than that required by the preceding articles; but in case of an equality of votes, the decision shall be in favour of the prisoner. The president at a court martial shall vote with the other members, but shall have no casting vote; provided that in cases of an equality of votes upon other questions than the finding and the sentence, the president shall have a casting vote.

Equality of votes.

Casting vote.

Concurrence of two-thirds of the members in a sentence of death.

Art. 69. No sentence of death shall be given against any offender by a court martial, unless two-thirds of the members present concur therein, or four where the court consists of five members, or five where the court consists of seven.

Peculiar Jurisdiction of General Courts Martial.

Commissioned officers amenable to general courts martial only, offences of which the punishment may be death or imprisonment exceeding four months.

Art. 70. All commissioned officers, all prisoners charged with offences which are punishable with death or with transportation, or with imprisonment exceeding four months, shall be tried by general courts martial only.

Dismissal, suspension, and reduction.

Art. 71. A general court martial, when a commissioned officer shall be convicted before it of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjudge such officer to be dismissed the service, or to be suspended from rank and pay and allowances for a stated period, or to be placed lower on the list of his rank, by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service, and the court shall in every such sentence specify the extent or degree of suspension or reduction which they shall so adjudge.

General Powers of Punishment vested in all Courts Martial.

Non-commissioned officer punished with loss of rank, dismissal, &c.

Art. 72. Any court martial, when a non-commissioned officer or soldier shall be convicted before it of any offence before specified, of which the punishment is not before defined or is left discretionary, may adjudge such non-commissioned officer to be reduced to serve as a private soldier, or may adjudge a non-commissioned officer or soldier to be dismissed the service, or to be placed lower in the list of the rank which he holds, with proportionate loss in respect to length of service, such loss to be distinctly specified in the sentence, or may adjudge such non-commissioned officer, first reducing him to the ranks, or such soldier, to be imprisoned for any period not exceeding four months, or to be imprisoned, with hard labour, for any period not exceeding two months, and may direct the prisoner to be kept in solitary confinement for any portion or portions of his term of imprisonment, not exceeding one month at a time; and in addition to any such punishments may adjudge a forfeiture of all claim to pension on discharge, which might otherwise have accrued to such non-commissioned officer or soldier from the length or nature of his service, or of all additional pay while serving, or both these forfeitures.

Provided that every soldier sentenced to imprisonment with hard labour shall be struck off the strength of his corps from the date of confirmation of such sentence, and that no soldier who has undergone such punishment under the sentence of any court martial shall be capable of being re-admitted into the ranks or receiving pension on discharge; provided also, that all cases of sentences, including forfeiture of additional pay while serving, shall be reported to and confirmed by the Commander-in-chief or commanding officer of the forces, before they are carried into effect, and that all forfeitures of any prospective advantage shall be restorable by the same authority.

No person to be tried second time for same offence; previous convictions.

Art. 73. No person being acquitted or convicted before a court martial of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence; provided always, that after a prisoner shall be found guilty by a court martial of any offence, such court martial may receive evidence of any previous conviction before a court martial, for the purpose of affixing the punishment to which the prisoner is liable to be sentenced for the offence of which he has been so found guilty.

Art. 74. No person shall be liable to be tried or punished for any offence against these articles, which shall appear to have been committed more than three years previous to the order directing the assembly of the court martial whereby he is to be tried, unless the person accused, by reason of his absenting himself, or some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall have ceased. Limitation of liability to trial.

Art. 75. No non-commissioned officer shall be reduced to the ranks but by the sentence of a court martial. Non-commissioned officers, how to be reduced.

Punishments otherwise than by Courts Martial.

Art. 76. In cases of light offences, a commanding officer may, without the intervention of a court martial, award extra drill for a period not exceeding 15 days, extra duty, not exceeding two reliefs, restriction to barrack limits, not exceeding 15 days, or confinement in the quarter guard, defaulter's room, or solitary cell, not exceeding seven days removal from staff situations or acting appointments; and none of these descriptions of punishment shall be awardable by sentence of a court martial. Jurisdiction of commanding officer without a court martial. Court martial precluded from awarding such sentences.

Complaints.

Art. 77. Any officer, non-commissioned officer, or soldier, thinking himself wronged by his superior or other officer, is to complain thereof to the commanding officer of his troop or company, by whom, if the grievance be not redressed, such officer, non-commissioned officer, or soldier, may complain to the commanding officer of his regiment, who is hereby required to examine into such complaint, or remit it to his superior authority, as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished according to the sentence of a general or other court martial, in manner hereinbefore mentioned; provided that such offender shall not be liable to be sentenced to dismissal, nor to suffer imprisonment with hard labour. An officer, non-commissioned officer, or soldier, considering himself wronged by his superior, may complain to his commanding officer.

Arrest and Confinement preparatory to Trial.

Art. 78. Any officer, non-commissioned officer, or soldier, being charged with the commission of a crime deserving punishment, his commanding officer, if he is of opinion that there are reasonable grounds for inquiry, shall order him to be put under arrest, if an officer; or if a soldier, to be confined until he shall be either tried by a court martial or shall be lawfully discharged by a proper authority, and a court martial for the trial shall be assembled within eight days; or if it cannot be conveniently assembled within that time, then as soon as it can be conveniently assembled. Officers, non-commissioned officers, and soldiers, may be placed in arrest, or confined, preparatory to trial.

Execution of Sentences by Courts Martial.

Art. 79. In every sentence of death awarded by a general court martial, the court shall specify that the offender shall "suffer death by being hanged by the neck until he be dead," or "by being shot to death from the mouth of a cannon," as the court in their discretion shall deem expedient; and such sentence, if confirmed, shall be carried into effect accordingly. Whenever the sentence of a general court martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, the Nizamut and Foujdaree Adawlut shall give effect to such sentence, or commuted sentence, on the sentence being certified to the court by the Adjutant-general or his deputy, under the authority of the Commander-in-chief or commanding officer of the forces at the presidency to which the prisoner may belong. Sentence of death. Nizamut and Foojdaree Adawlut to give effect to sentences of transportation.

Art. 80. Persons sentenced to imprisonment by courts martial shall be imprisoned in any public prison, or in any other fit place which the Commander-in-chief or other officer confirming the sentence shall direct. Imprisonment.

Art. 81. Whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, or with solitary confinement, or both, it shall be the duty of every magistrate to give force to such sentences, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division or district within which the trial is held. Magistrates to give effect to sentences of imprisonment by military authority.

When a fine is adjudged by a court-martial, the pay or property, &c. of the offender within camp, &c. shall be available.

Art. 82. In every case wherein a fine of pecuniary compensation shall be adjudged by a court martial, any arrears of pay or public money due to the offender, or any property belonging to him in camp, garrison, or cantonment, shall be available under an order from the officer commanding at such camp, garrison, or cantonment, for the payment of the amount so adjudged.

Section IV.

Effects of the Dead.

Effects of deceased commissioned officers, non-commissioned officers, soldiers, and public servants.

Art. 83. When any commissioned officer, non-commissioned officer, or soldier, or any person receiving public pay, drawn by any officer in charge of a public department belonging to the army, may die or be killed in the service, the commanding officer of the regiment or party, or officer in charge of the department, shall, if no heir or executor be present, secure his effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the adjutant or officer in charge of the department.

Rules to be observed in the disposal of the effects of the deceased, if no heir or executor be on the spot.

Art. 84. If there be no heir or executor on the spot, the effects are to be publicly sold; the commanding officer of the regiment or party, or officer in charge of the department, after discharging the debts of the deceased, viz. the expense of funeral ceremonies, his debts in camp or quarters, and regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or in failure of such to the legal representative of the deceased. And in the event of no executor, heir, or other representative of the deceased attending and establishing his claim within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate is to be remitted to the general treasury, at the presidency.

Section V.

Articles relating to Service out of the British Territories, Martial Law, Rebels' Pay during Imprisonment by the Enemy, Effects of Deserters.

When troops are serving where there is no British Court of Judicature, serious offences may be tried by general court martial.

Art. 85. Whenever any body of the troops shall be employed out of the British territories, any officer, soldier, or other person amenable to military law, accused of murder, robbery, or other serious offences against person or property not heretofore provided for, shall be liable to be tried by a general court martial, and punished with death, or otherwise, according to law, as provided for the adjacent British territory.

General courts martial may be assembled out of the British territories, where the troops shall be in military possession, &c. Commanding officer to confirm sentence.

Art. 86. In any place out of the British territories the officer commanding any division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers, for the trial of any person under his command accused of any of the last-mentioned offences, or of any offence against these articles; but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party shall belong.

General courts martial may be assembled for the trial of persons owing allegiance to the British Government who may be taken in arms against the said Government, &c.

Art. 87. And in all places within the Company's territories where martial law shall have been by due authority proclaimed, the officer commanding the division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers, for the trial of any person owing allegiance to the British Government, who may be taken in arms against the said Government, or who may be assisting in rebellion by maliciously attacking or injuring the persons or properties of any loyal subjects, or in any other manner; and it shall be lawful for any such court martial to adjudge any person so found guilty, to suffer death, by being hanged by the neck until dead, or to be otherwise punished, as to such court martial shall seem expedient. But no sentence shall be executed until confirmed by the said commanding officer.

And the commanding officer of every such division, detachment, or distinct party, is hereby authorized to arrest, and detain in custody, all persons engaged in such rebellion, or suspected thereof, and to cause all persons so arrested and detained to be brought to trial, and to execute the sentence of all such courts martial, whether of death or otherwise, and to do all other acts necessary for such several purposes.

Art. 88. Every court martial, as constituted in the preceding article, shall have power to try any person owing allegiance to the British Government, who shall be taken in arms against the state, or otherwise aiding and abetting the enemy; and such person so found guilty, shall be liable to the punishment of death, by being hanged by the neck until dead, or to transportation for life. But no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party shall belong.

Prisoners aiding, &c. the enemy, amenable to court martial, and liable to suffer death.

Sentence not to be executed until confirmed by the officer commanding.

Art. 89. Any officer, non-commissioned officer, or soldier, who shall be taken prisoner by the enemy, shall forfeit all claim to pay and allowances during the period of his remaining a prisoner, and until he shall again return to the service; when if he can establish, before a court martial, that he was unavoidably taken prisoner in the course of service, and that he hath not served with, or assisted the enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole or such portion of his arrears of pay and allowances as the court martial shall award.

Any officer, non-commissioned officer, or soldier, made prisoners, to forfeit all claim to pay and allowances, &c.

Art. 90. The effects of deserters are to be publicly sold, and the proceeds, after payment of regimental debts, remitted by the officer commanding the corps to which the deserter belongs to the general treasury at the presidency.

Effects of deserters.

Section VI.

Application of the Articles.

Art. 91. All officers, non-commissioned officers, soldiers; all drivers or farriers, trumpeters and drummers; all hospital attendants, sub-assistant surgeons, native doctors and dressers; all artificers and labourers, sutlers, camp followers, public and private, or others attached to or serving with any part of the army, are to be governed by these articles, and subject to trials by courts martial.

Art. 92. Whenever any portion of the troops belonging to one presidency shall be serving within the limits of another presidency, such troops shall be considered as placed, during such service, under the orders and authority of the Commander-in-chief or commanding officer of the forces of the presidency within which they are serving, for all the purposes of these articles of war, in the same manner as though they belonged to such presidency; and all the provisions of these articles of war which relate to the trial and punishment of offenders belonging to the presidency within which the trial is held, are hereby declared applicable to the trial and punishment of offenders amenable to these articles of war, serving within such presidency; provided always, that it shall be lawful for the Governor-general in Council, in his executive capacity, to direct that the troops or any part thereof of any presidency, whilst serving without the limits of such presidency, shall continue under the orders and authority of the Commander-in-chief or commanding officer of the forces of the presidency to which they belong, for all purposes of these articles.

Troops belonging to one presidency serving within another.

Art. 93. Persons of European descent (whether on the side of their father or mother), professing the Christian religion, shall not be amenable to these articles, but if belonging to the descriptions mentioned in Article 91, shall be subject to the Mutiny Act, and articles of war in force for the better government of the officers and soldiers in the European service of the East India Company.

Section VII.

Promulgation of the Articles.

Art. 94. These articles are to be translated into the several languages of the different presidencies and the parts following, viz. the 2d section, together with the following articles in other sections which are marked with an asterisk, viz. 2. 4. 71, 72. 75. 77, 83, 84. are to be read once every six months at the head of every regiment, troop, or company mustered in the service, and to every recruit at the period of his enlistment.

No. II.—Part 2. Articles of War.

(No. 324.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general.

Legis. Cons. 20 May 1839. No. 27.

Sir,

Legislative Dep.

In continuation of Mr. Officiating Secretary Maddock's letter, No. 843, of the 19th November last, I am directed by the Hon. the President in Council to forward to you, to be laid before the Right hon. the Governor-general of India, for his Lordship's consideration, and such orders as may be necessary, the accompanying copies of papers as noted in the margin * and the revised draft of articles of war for the discipline of the native army.

2. The governments of Fort St. George and Bombay have now submitted the opinion of the military authorities of those presidencies on the draft of articles of war, especially with regard to the remarks made in Mr. Officiating Secretary Maddock's letter of the 19th of November last, on the rules to which soldiers, &c. professing the Christian religion should be amenable. The members of Council have severally recorded their sentiments on the subject, in various Minutes. Major-general Sir W. Casement has also, at the request of the Council, prepared two papers, which are also herewith forwarded.

3. The principal points for consideration will be seen from Mr. Amos's Minute, dated the 18th of April, and with the exception of the question of corporal punishment, the same Minute will show the manner in which the President in Council proposes to treat each point.

Mr. Robertson, 7 January 1839; President, 9 March 1839; Mr. Bird, 16 May 1839.

4. On the question of corporal punishment, I am directed to request attention to the Minutes noted in the margin, and General Casement's papers.

5. The passing of the articles of war, as the draft now stands, would be in effect the legal abolition of corporal punishment in the native army, for that punishment though it is now discontinued under a General Order, has never yet been abolished by law. The President in Council feels doubts of the expediency of taking such a decided step as the formal repeal of the laws authorising the infliction of this punishment before having before him positive information of the actual result of the experiment that, for practical purposes, may be considered to have been under trial for the last four years.

6. The President in Council does not find that any reports or opinions have ever been collected on the practical working of the General Order of the 24th of February 1835. He would therefore suggest, for the consideration of his Lordship, the expediency of calling, before finally determining this important question, upon a limited number of the leading military men at the three presidencies, including some of those actually serving with the troops, to state what have been the results of the order abolishing corporal punishment, as far as their own actual experience enables them to say; and what consequences they would anticipate from its perpetuation on the one hand, and from its rescission on the other.

I have, &c.

Fort William,
20 May 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the
Government of India.

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* Minute by the Hon. A. Amos, dated the 4th January 1839.
Minute by Mr. Robertson, dated the 7th January 1839.
Letter from Secretary to Government of Fort St. George, dated the 15th January 1839, with Enclosures.
Letter from Secretary to Government of Bombay, dated the 21st January 1839, with Enclosures.
Minute by the Hon. Mr. Amos, dated the 8th February 1839.
Minute by the Hon. Mr. Bird, dated the 22d February 1839.
Minute by the President, dated the 9th March 1839.
Letter from Secretary to Government of Fort St. George, dated the 14th March 1839, with Enclosure.
First Note by Major-General Casement, dated the 10th April 1839.
Second Note by Major-General Casement, dated the 16th April 1839.
Minute by the Hon. Mr. Amos, dated the 18th April 1839.
Minute by the Hon. Mr. Robertson, dated the 4th May 1839.
Minute by the Hon. Mr. Bird, dated the 16th May 1839.
Draft of Articles of War, dated the 20th May 1839.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor General, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India.

Legis. Cons. 12 August 1839. No. 39.

Sir,

I AM directed to acknowledge the receipt of your two letters, of the dates and subjects noted on the margin,* and in reply, to communicate as follows: Legislative.

2. On the subject of the articles of war for the native army, the Governor-general has recorded a Minute, containing such observations as have occurred to him with reference to the points on which Mr. Amos has invited discussion. A copy of that document is enclosed, for submission to the Hon. the President in Council.

3. On the subject of the draft of Act for the better administration of justice in military courts of request, the Governor-general has studied with much attention, and his Lordship can suggest no better method of throwing light on the many points with regard to which doubts may be entertained, or of endeavouring to reconcile the differences in law and in practice which prevail in the military courts of request at the three presidencies, than that of issuing the circular which has been approved by the Hon. the President in Council; and his Lordship would wait for the returns to that circular before entering into any observations on the many points which are open to discussion.

4. On the present occasion his Lordship has only to remark, with regard to the request of attention to the 4 Geo. 4, c. 81, that this statute is about to be repealed and re-enacted, with alterations and amendments; and that, in his opinion, a solemn declaration is to be preferred to an oath in the case of a commissariat officer exercising judicial functions, should an oath be not indispensable under the provision of section 57 of the above-mentioned statute, which directs that the members of a court of requests, being Europeans, shall be sworn on the Holy Evangelists.

5. The Governor-general, however, would not, even for the present, take leave of the subject without gratefully acknowledging the soundness of the views and the laborious attention with which the fourth member of the Council has pointed out and endeavoured to overcome the difficulties of the proposed Act.

6. The original papers received with your letter, No. 320, are herewith returned.

I have, &c.

Simlah, 4 July 1839. (signed) *T. H. Maddock*,
Officiating Secretary to the Government of India,
with the Governor-General.

MINUTE by the Right Hon. the Governor-general.

IN this paper I will apply myself as directly and as briefly as I can to the five points most deserving of consideration, which have been enumerated by Mr. Amos in his Minute of 18th April 1839.

Legis. Cons. 12 August 1839. No. 40. Enclosure.

1. *Hard Labour on the Roads in Irons.*—I think that whilst the propriety of at all allowing this description of punishment is in doubt and under discussion, the fixing it by enactment as the soldier's sentence would not be justified. A sentence simply to "hard labour" will include "hard labour in irons on the roads," if the present system should continue, and it should be determined that such shall be the execution of the judgment. On the other hand, if any other punishment shall, in consequence of the Report of the Prison Discipline Committee, be substituted for labour on the roads, it is only likely to be more certain and severe, and to carry with it as much terror to the soldier as to other descriptions of culprits. In the meantime, it seems to be generally the opinion of the government that, though Legislative.

* Letter, No. 324, dated 20th May 1839, with enclosure, on the subject of the enactment of articles of war for the discipline of the native army. Letter, No. 320, dated 20th May 1839, on the subject of a proposed enactment for the better administration of justice in military courts of request, in all the three presidencies of Bengal, Madras, and Bombay, with enclosures.

No. II.—Part 2.
Articles of War.

though punishment on the roads should be regulated, it ought not to be at present discontinued.

2. *De bene esse Depositions.*—I would not willingly admit on a court martial any rule of evidence which is repudiated in our ordinary courts of justice, and I think that the trial of a prisoner could not with propriety be influenced by the force of depositions not taken in his presence, except indeed a deposition by one in *articulo mortis*, or such as would be admitted in the usual administration of the law. I should not, however, object to an exception from this rule in the case which is laid down in the Madras Order of November 1830 on this subject, namely, where the attendance of a witness whose evidence is thought by the prisoner to be important to his defence cannot be obtained without great inconvenience and expense, and where, with the consent of all parties, an examination *de bene esse* is held before a justice of peace.

3. *Execution of the Sentence of Death.*—I lean to the opinion that it would be best not to specify in this law what shall be the mode of inflicting capital punishment. The shooting a soldier by the muskets of his companions is repugnant to native feeling, and the blowing him from a cannon's mouth is as repugnant to English feeling. I should think it the duty of the court to select the mode of execution which is not marked by needless inhumanity, and which is most national, and this would soon be regulated by practice. If possible, I would gladly avoid an unprofitable and painful discussion, and would not attempt to define upon the face of the law what that mode should be.

4. *Flogging.*—Corporal punishment in the native armies of India has now been for more than four years discontinued, under a general order, but it has not been abolished by law, and the articles of war, as published for general information, would, in case of their enactment, have the effect of a legal abolition. It has been doubted whether this is expedient without further information; and the recommendation is made, that statements be called for from select military authorities in the three presidencies of the results of the abolition of flogging, and for opinion upon what would be the effect either of a legal perpetuation, or a rescission of the order by which it was abolished. I think that the order in question was ill-advised, and I very much regret that it ever was issued. I have, however, an extreme dislike to the support of military discipline by the infliction of corporal punishment; but whilst I could earnestly have wished to see this description of punishment gradually disused, I see that its abrupt and complete abolition has been, and cannot but yet be, a source of difficulty and embarrassment. At the same time I think that the measure is one from which there is no return, and that it is far wiser that the attention of every officer should be directed to the best means of maintaining discipline without the infliction or the terror of corporal punishment, than that men's minds should be agitated by the contemplation of a possibility of its revival. I attach very little importance to the imperfect form in which the abolition was accomplished; as, if the question were of the revival of the punishment, it would make but little difference, after four years of suspension, whether this were done by the rescission of an order, or by the repeal of a law. Either would equally mark a complete change of purpose on the part of the government in a matter materially affecting the condition of the soldiery. I am aware that the Commander-in-chief of the presidency of Fort St. George has expressed an opinion that the abolition of corporal punishment has been productive of the worst consequences to the discipline of the native army under his charge, and that the sooner it can be restored the better; but I am satisfied that this has not been the case in the presidency of Bengal. I share most strongly in the doubts recorded by Colonel Morison as to whether the order could be safely or wisely retracted here, and as far as my observation and general report have enabled me to form a judgment, I am, with Sir William Casement, of opinion that the restoration of the punishment would, if adopted, be found (while it is in our power to provide another powerfully-deterring penalty for misconduct) to be hurtful to the best interests of the service. During the last four years from 40,000 to 50,000 recruits must have entered an army in which, by an avowed act of the government, corporal punishment had ceased to exist; and I am satisfied that no such report as that which it is proposed to call for would justify the government in rescinding this Act; I would deprecate, therefore, any further agitation of the question, and would recommend, if the Legislative Council should be decided upon not passing

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No. II.—Part 2. Articles of War.

in its present form the first part of number 72 in the printed draft of articles, by which it is enacted, that no court martial shall sentence any non-commissioned officer or soldier to be flogged, that either the suggestion which has been thrown out by Mr. Amos, in his Minute of January 4th, for altogether omitting the clause in question from the Act should be adopted, or, if the member of Council should entertain a decided repugnance even to this proceeding, that then, as the only course that seems open to us, nothing more be done than that these papers be submitted to the Honourable Court, or to the Secret Committee, for their decision.

5. *Christian Amenability.*—I am always pleased, wherever it is possible, to avoid legislation upon subjects on which warm and sensitive feelings are entertained, and shall be glad if it should be found practicable to exempt Christians in the native army from corporal punishment by a circular from the Commander-in-chief. I have uniformly, however, maintained the opinion that Christians in the native army, though tried by European courts martial, were only subject to the punishment of the army to which they were attached.

Simla, 26 June 1839. (signed) *Auckland.*

(True copy.)

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India,
with the Governor-general.

MINUTE by the Honourable *T. C. Robertson*, Esq.; dated 26 July 1839.

Legis. Cons. 12 August 1839. No. 41.

I HAVE a few brief remarks to record on each of the points touched upon by his Lordship the Governor-general, in his Minute of the 26th June.

Articles of War. Governor-general's Minute.

1. *Hard Labour in Irons on the Road.*—That we shall ever find any effectual substitute for this punishment I myself think most improbable; at all events, it must continue in force until penitentiaries are built, which, upon the scale contemplated, will be a work of so many years, that we may safely leave the remote period of the possible introduction of any new system of prison discipline, connected with its completion, out of our calculation in legislating upon the question before us.

But the point to which I would draw attention is the necessity for empowering regimental courts martial to sentence, in some cases, to limited periods of imprisonment with labour. I have now got the proceedings of a court of that class before me, in which a sepoy, convicted of theft and insubordination, is sentenced to be dismissed from the service. I cannot comprehend why, if general courts may sentence to long periods, regimental courts should not be allowed to sentence to brief periods of imprisonment, with or without labour.

2. *De bene esse Depositions.*—The proposition which I ventured to submit on this head was hazarded on no light authority. I find the necessity of admitting such depositions in proof urged in the strongest terms, and with the most convincing reasoning, by the Duke of Wellington, in a letter that may be found near the beginning of the fifth volume of his recently published despatches.

One of a detachment passing through a village commits a crime, and passes on through a country where all civil power is shaken or suspended by military operations. On reaching his regiment, perhaps many hundred miles from the scene of his crime, he is for the first time called to account. The evidence of his comrades may go far to prove his guilt, but that of the sufferers by his violence or rapacity may be wanting. These may, and most probably will be, the weak, either by sex or age, who cannot traverse a disturbed country, and therefore, their written depositions being absolutely rejected, instead of being cautiously received, the offender escapes, and more outrages of course ensue. I do not think that the cause of either justice or humanity is served by such scrupulosity under such circumstances, and it is only under such circumstances that these depositions are proposed to be rendered admissible.

3. *Execution of Sentence of Death.*—I still agree with Sir William Casement, that the sentence had better be enjoined, in all cases, to be that of "hanging by the

No. II.—Part 2.
Articles of War.

the neck," to prevent the risks attending the arbitrary selection of any other mode of execution.

4. *Flogging.*—I have before stated what the information is that I require upon this point, and the mode in which I propose that it should be obtained.

The objections to repairing what all admit to have been an error are not self-evident; and I know no way of attaining to a fair comprehension of the degree of weight that should attach to them but that which I have suggested. As, without that information, safe legislation seems impossible, the best course we can pursue is, as proposed by his Lordship, to refer the whole question to the authorities in England.

5. *Christian Amenability.*—I entirely concur in his Lordship's remarks upon this part of the question.

(signed) *T. C. Robertson.*

Legis. Cons.
12 August 1839.
No. 42.
On the Articles of War.

MINUTE by the Honourable *W. W. Bird,* Esq.; dated 27th July 1839.

THE proposal to submit the whole of the papers for the decision of the Honourable the Court of Directors appears to me to be judicious, as, besides the abolition of flogging, there are several points on which a difference of opinion exists; and it was even doubted by the late President of the Council whether, considering the different usages at the three presidencies, it would not be advisable to forego the advantages, whatever they might be, of a general code, and leave the discipline of the native armies respectively to be conducted, under the code belonging to each, in the mode to which they had been accustomed.

Since the subject was last under discussion, we have seen the consequences of the abolition in question exemplified by the army beyond the Indus in a mode calculated to raise much doubt of its expediency. From the general orders of his Excellency the Commander-in-chief, dated Candahar, the 3d ultimo, it appears that a sepoy attached to the envoy and minister was brought to trial before a native general court martial for insubordination, and sentenced to imprisonment with hard labour for a period of two years, to undergo which it was necessary to order him to be detained as a prisoner until an opportunity should offer of sending him under an escort to Loodhiana, where he was to be delivered to the political agent for the purpose of suffering the punishment awarded him.

Such a procedure may be left to speak for itself; however well the system may work within our own provinces, it is quite clear that beyond the frontiers, and especially in an enemy's country, it must be attended with great inconveniences.

(signed) *W. W. Bird.*

Legis. Cons.
12 August 1839.
No. 43.
Articles of War.

MINUTE by the Honourable Sir *William Casement.*

HAVING already submitted, while military secretary, to the consideration of Government such observations as occurred to me on the principal points, to which attention is now more particularly drawn, I need not on this occasion recapitulate opinions from which, as a member of the government, I find no reason to dissent, but I embrace this opportunity to record a few remarks called forth by the Minutes which have preceded mine.

1. *Hard Labour in Irons on the Roads.*—However desirable it appeared to me to insert this particular designation of punishment in the articles of war, I am now quite willing to acquiesce in the opinions expressed by the Governor-general, and in Mr. Amos's Minute of the 18th of April last, that the words "hard labour" might suffice for the terms of sentence. I am led to this conclusion by the consideration stated on this point in Mr. Robertson's Minute; for, as the actual infliction of labour on the roads in irons is not apparently likely to be abandoned for at least a considerable period, it will be resorted to for the punishment of military delinquents, even under the less definite terms of sentence proposed to be adopted.

I fully concur in the sentiments expressed by Mr. Robertson as to the necessity of empowering courts martial to sentence to imprisonment with labour. At present there

there is no more authority for such a sentence being awarded by a native general court martial than there is for the exercise of similar power by inferior courts martial; and with the powerful argument we have before us of the necessity and efficacy of this description of punishment, deducible from the continual resort to it by native general courts martial for some time past, with no other sanction than the confirmation of sentence by the Commander-in-chief, there can be no doubt that a limited recourse to the same punishment by inferior native courts martial would operate with the best effect on the discipline of the army.

As it appears probable that the promulgation of the articles of war will be postponed for a considerable time, I very earnestly unite with Mr. Robertson in attracting immediate attention to this subject, with a view to the enactment of a legislative measure empowering all native courts martial to sentence military persons to imprisonment with labour, for the offences for which in the proposed code of articles they are made liable to be so sentenced, making the same distinction which prevails in the code between the powers of general and inferior courts martial.

I can anticipate no objection to this enactment, because the punishment of imprisonment with labour is one upon which there is no difference of opinion, the terms in which it shall be designated being the sole question regarding it; and there will be no practical inconvenience in it, because such an enactment now promulgated, would be confirmed, not set aside, by the superseding authority of the code of articles whenever it should be legalized; while in the meantime the ends of discipline would be most effectually answered by the measure, and the want of the power of corporal punishment would be more speedily shown to be imaginary.

Without adverting to the second and third topics, upon which my opinions are unchanged, I pass on to the fourth topic, the punishment of flogging, regarding which, while I take this opportunity of reiterating my already expressed opinions, I beg to remark, that the case in the army of the Indus (a solitary one, I believe, since the army crossed that river), to which Mr. Bird in his Minute refers, has made upon my mind an impression very different from that which has operated upon his. That in certain situations, especially in such as that now occupied by the army of the Indus, difficulties will occasionally interfere with the immediate carrying into effect of a sentence of imprisonment with labour, is undeniable; but means may be emergently devised, or opportunity may be at no distant period presented, for readily effectuating such a sentence, and at any rate it is greatly preferable to undergo some portion of unavoidable difficulty, such as the case in question brings to view, rather than summarily to get rid of that difficulty by the introduction of corporal punishment, which, once re-established, will go far to undo the important advantages which it appears to me its abolition has secured to us. The difficulties occurring under the existing state of the law are not to be compared with those which would immediately flow in upon us with the re-introduction of corporal punishment. I say immediately, because, if there be any foundation for the strong impression on my mind that we are indebted to the abolition of the lash for the recent addition to the flower of our native army, in the late augmentations, the restoration of flogging would not only create extensive disgust with our service, but its subsequent discontinuance, should that measure come eventually to be found expedient, would supply no remedy for the evil intermediately introduced, because the vacillation in the conduct of government thus exhibited, would render its future proceedings justly open to distrust and apprehension.

As far as my information extends, the conduct of the army of the Indus shows most forcibly that there is no necessity for restoring the power of corporal punishment. Never was discipline more perfect than all the accounts which I have heard concur in representing it to be in that army, and yet the lash does not exist there; and although I am willing to allow that a substitute for corporal punishment has been greatly needed in the three presidencies, as regards the repression of minor offences, I report that, in my opinion, an immediate legislative measure such as I have before noticed, would be an effectual and a most convenient means of supplying that deficiency.

I cannot close these remarks without expressing my regret at the prospect of further delay by transmitting the articles of war for the consideration of the Honourable the Court of Directors. It has been repeatedly declared by those most conversant with the subject, and never has it been dissented from by any one,

No. II.—Part 2.
Articles of War.

one, that an urgent necessity exists for the promulgation of articles of war for the government of the native army; and yet, at this late date, after an unusually protracted period of discussion, it is proposed to await the instructions of the Honourable Court previous to their enactment. In my opinion, every additional delay is an additional injury to the service, and believing that we are now in possession of all necessary means for adapting the code to the purposes for which it has been compiled, I feel reluctantly constrained to record my dissent from the proposed reference.

(signed) *Wm. Casement.*

Calcutta, 29 July 1839.

Legis. Cons.
12 August 1839.
No. 44.
Articles of War.

MINUTE by the Honourable *A. Amos*, Esq.; dated 31 July 1839.

1. *Hard Labour in Irons on the Roads.*—I have before written fully upon this subject. This point may be considered as disposed of. The difference which existed was not as to the infliction of the punishment, but as to its insertion (unnecessary in a legal point of view) in the articles of war. Its insertion is no longer pressed.

2. *De bene esse Depositions.*—This is a subordinate point, not hitherto noticed in any articles of war, and applicable only under peculiar circumstances. I still continue to think that evidence which has not been subjected to the test of cross-examination (leaving out of consideration other defects) is, generally speaking, worse than no evidence at all. It may be observed that the best-intentioned witnesses are constantly substituting their own reasonings, and what they have heard, for their own knowledge. As to dying declarations, noticed by Lord Auckland, they have been losing ground very much of late in England, and are now confined to cases of murder, where the subject of the declaration are the circumstances of the murder.

3. *Specification of the Punishment of Death.*—I am inclined to modify my former opinion, which was doubtfully expressed, and to coincide with Lord Auckland, especially as, I presume, uniformity of practice could be insured by a general order.

4. *Christian Amenability.*—This point seems to be disposed of by having recourse to a circular order. I conceive the difficulty is not that pointed out by Lord Auckland, but that it consists in the fact that some Europeans at least attached to the native army must be subject to the articles of war provided by English statute for European soldiers in the service of the Honourable Company, and with which we are precluded from interfering; and that it may involve some of the nicest questions of Indian law to determine whether we can affect by our articles any and what descriptions of Europeans by birth or descent. It has been thought the safest course to subject all European Christians by birth or descent, some of them being already in that predicament, to the European articles; but as this would subject them to flogging, to remedy the anomaly by a circular order.

5. *Flogging.*—I could have wished that a medium course had been taken, by keeping the power in suspense, providing by the articles that it should not exist, except for such periods and on such occasions as government might by special order direct. Under all the circumstances, and considering that the last communication from the Court of Directors upon the subject was expressed in strong terms of disapprobation at the punishment being suspended, I incline to think it the best course that the papers should be submitted for the consideration of the home authorities.

Lastly.—A new point has been adverted to by Mr. Robertson and General Casement, viz. the propriety of empowering regimental courts martial to imprison with hard labour. This is provided for by the 72d Article. I will prepare a draft Act, upon which the expediency of intermediate legislation may be discussed.

(signed) *A. Amos.*

—(A.) No. III.—Part 1.—

MILITARY COURTS OF REQUEST.

Proposed Modification in Regulation VII. of 1832, Madras Code.

(No. 140.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department; dated 15th June 1838.

Legis. Cons. 12 August 1839. No. 15.

Sir,

With reference to the papers noted in the margin* on the subject of certain proposed modifications in Regulation VII. of 1832 of the Madras Code, I am directed by the Indian Law Commissioners to request that you will submit the following observations and recommendations to the consideration of the Honourable the President in Council.

2. The first communication contains several suggestions of his Excellency the late Commander-in-chief at Madras; these the Law Commissioners propose to notice successively, following generally the order in which they are there arranged.

3. First, in consequence of misapprehensions existing on the part of commanding officers as to the authority meant to be vested in them by sections 3 & 4 of Regulation VII. of 1832, it is suggested that the police powers intended to be conferred on officers commanding at military bazaar stations, and under their orders, in the senior commissariat officer at such stations, or other officer specially appointed by government, be precisely defined by law; that the officer in charge of the police at such stations should be declared *ex officio* coroner within the military limits; and that rules should be laid down regarding the constitution of the juries, the summoning and swearing of the jurors, and the administering of oaths to witnesses on the occasions of inquests held before him; and also for regulating the proceedings of military courts of inquiry beyond the frontier in like cases. It does not appear from the papers before the Commissioners that the inconveniences which have been felt from the want of more specific rules on the points above adverted to are so great as to call for special legislation for the purpose of remedying them; and the Commissioners are therefore of opinion that the full consideration of these suggestions may be most conveniently postponed to the general revision of the police regulations of the several presidencies.

4. Secondly, with reference to the abolition of corporal punishment in the native army by order of the Supreme Government, it is suggested that imprisonment for a term not exceeding one month be substituted for the corporal punishment authorised by sections 15 and 16 of the Regulation in question, in combination with imprisonment in aggravated cases. The Commissioners have already had before them the draft of an Act for the abolition of corporal punishment generally in the criminal courts under the Madras Presidency, which was transmitted for their consideration with Mr. Macnaghten's letter of the 7th September 1835, and on this subject it is only necessary to refer you to the remarks contained in paragraphs 2, 3, and 4, of my reply to that letter, dated the 14th September 1837.

5. Thirdly, it is suggested that the extension of Article 7, sec. 12, of the articles of war for the native troops, by clause 1, sec. 21, of Regulation VII., 1832, should be made applicable to actions of debt not exceeding 400 rupees against native commissioned officers who are not included in the military classes specified in sec.

* 1. Mr. Macnaghten's Letter to the address of Mr. Millett, dated the 21st December 1835 (No. 85), and the first packet enclosed therewith.
2. Mr. Macnaghten's Letter to the address of Mr. Millett, dated the 19th December 1836 (No. 369), and the third packet enclosed therewith.
3. Mr. Macnaghten's Letter to my address, dated the 8th May 1837 (No. 129), and the papers enclosed therewith.

sec. 13 of that Regulation. In this recommendation the Law Commissioners entirely concur.

6. Fourthly, it is proposed to declare expressly that the restrictive provisions of clause 2, sec. 21, apply to all punchayets assembled under the Regulation, and to courts martial held under clause 3, sec. 42, of the same. Many illegal awards, it is added, have already occurred from the want of such explanatory clause.

The Commissioners presume that this recommendation, in so far at least as punchayets and courts martial assembled under sec. 42 of the Regulation are concerned, was founded on former constructions of the Sudder Adawlut, wherein it was held that the provisions of sec. 42, were subject to the restrictive clause referred to. But by a late interpretation of the Sudder Court,* those constructions have been overruled, and it is now determined that the suits mentioned in clause 2, sec. 21, are not excluded from the cognizance of punchayets and courts martial assembled under sec. 42. The Law Commissioners consider the law as settled by the latter interpretation as the most expedient.

The Commissioners do not perceive that the Sudder Adawlut have ever ruled that any description of suits for sums of money or other personal property are excluded from the cognizance of punchayets assembled under the authority of sec. 24, by reason of anything contained in clause 2, sec. 21, of the Regulation; and if this be so, the Law Commissioners do not find any necessity for the proposed explanation of this section.

7. Fifthly, it is proposed that the restrictive provisions of section 32, limiting the award of interest to 12 per cent., should be made applicable to punchayets and courts martial held under the special provisions of sec. 42.

In this suggestion the Commissioners cannot concur. They are of opinion that, as a general rule, the party liable should be bound to pay the amount of interest he may have agreed to pay, though more than 12 per cent., and that in cases where no specific rate may have been stipulated for, the amount of interest to be awarded should be regulated by the rate usually paid in transactions of a like nature.

8. Sixthly, it is proposed to declare expressly that land or other real property cannot be seized or sold in satisfaction of the awards of punchayets or courts martial assembled under this Regulation or the articles of war for the native troops, for the decision of civil suits.

From this suggestion also the Commissioners see reason to dissent. It appears to them that a debtor's property, both real and personal, should be liable to be sold in satisfaction of any decree or award passed by a regularly constituted court or other competent authority; provision being made that all attachments and sales be effected through the court within the local jurisdiction of which the property may be or be situated.

9. Seventhly, it is observed, that by clause 3, sec. 42, of the Regulation, courts martial may, under certain circumstances, be assembled for the decision of civil suits to any amount; but that as the law now stands, the debtor, in default of payment, can only be dealt with in the manner prescribed by article 7, sec. 12, of the articles of war for the native troops, regulating the procedure for giving effect to the awards of courts martial held for the decision of civil suits to a limited amount. It is suggested therefore, that the concluding provision of section 33 of the Regulation, which, according to a decision of the Sudder Adawlut, applies to the proceedings of punchayets only, should be made applicable to the proceedings of courts martial held under clause 3, sec. 42.

In this recommendation, as far as it goes, the Commissioners entirely concur, but, as observed in the preceding paragraph, they would extend the rule to all decrees of military courts and authorities. From the general terms employed in the proviso in clause 1, sec. 33, of the Regulation, they conclude that both real and personal property are liable to be sold by the zillah judge in satisfaction of the award of a punchayet.

10. Eighthly,

* See letter from the Registrar of the Sudder Adawlut to the Officiating Secretary to Government of Fort St. George, Judicial Department, dated 12th June 1834.

Extract from the proceedings of the Sudder Adawlut, under date the 7th August 1834, and

Letter from the Registrar of the Sudder Adawlut to the Chief Secretary to the Government of Fort St. George, dated the 28th December 1836, enclosed with Mr. Macnaghten's Letter of the 8th May 1837 (No. 129).

10. Eighthly, the Sudder Adawlut having ruled, that in cases where a charge of partiality may be preferred against a punchayet, and a court martial be thereupon assembled, under clause 3, sec. 42 of the Regulation, the court is in the first instance to investigate the charge of partiality, and upon such being established to the satisfaction of the court, then to try, decide, and determine the suit; it is suggested that this preliminary investigation should be clearly directed and made prescriptive by the Regulation itself. To this suggestion the court of Sudder Adawlut have added another, viz. that it may be further enacted that if the party fails in establishing the charge of partiality, the award of the punchayet is not to be disturbed. The Commissioners think that these proposed additions to the present law may be made with advantage.

11. Lastly, His Excellency the Commander-in-chief observes, that the Sudder Adawlut have decided that there is not any authority empowered to revise the proceedings of military courts held for the decision of civil suits, under Regulation VII. 1832, or the articles of war for the native troops, and that much evil assuredly arises from the consequent necessity of carrying into effect awards which are manifestly unjust; he submits, therefore, whether the proceedings of such courts should not be held subject to revision, and dependant upon the confirmation of the superior officer, in like manner with the proceedings of all other military courts whatsoever. At the same time his Excellency suggested that, previously to deciding this point, it might be desirable to obtain the opinion of the Advocate-general as to the position of military courts of request held under the provisions of sec. 57, 4 Geo. 4, c. 81, for the cognizance of actions of debt against European officers and soldiers; as in the event of the awards of such courts being understood to be final, and independent of revision and confirmation, it might not be right to make a different provision by regulation for the procedure of courts in suits where the defendant is a native of India.

It appears from the letter of the Register of the Sudder Court to the Chief Secretary to Government, dated the 21st October 1835, that the above question was accordingly referred to the Advocate-general, who in reply stated his opinion that the decisions of military courts of request, held under sec. 57 of 4 Geo. 4, c. 81, are final, and not subject to revision.

This opinion, the Sudder Court observe, confirms the correctness of their own construction of Sec. 33, Regulation VII. 1832, viz. That under the law as it now stands, the duties of the convening officer are purely executive; that he may on his own responsibility refuse to execute, but that he cannot in any way interfere with the judgment, and can neither order a revision nor a new trial.

As a general rule, the Commissioners deem it of great importance that every decision of a court of first resort should be open to revision before a superior court of appeal; but with reference to the peculiar constitution of the military courts under the articles of war for the native army, and the provisions of Regulation VII. 1832, they are not prepared to recommend an appeal from their judgments in civil suits, to the commanding officer, or render those judgments dependant on his confirmation; and they are also inclined to attach some weight to the consideration of maintaining an uniformity of procedure in the above courts, and those established by the Act 4 Geo. 4, c. 81.

12. The second communication under reply relates to certain resolutions passed by the government of Fort St. George, on the 13th August 1833, and approved by the Honourable Court of Directors, in a despatch dated the 30th September 1835.

13. By the first resolution it was determined that a criminal sentence duly passed and confirmed by the constituted military authorities, under the provisions of Regulation VII. 1832, cannot be modified or mitigated by any authority but that of government, and it was considered sufficient to declare this by a general order, directing that a reference be made to government whenever the officer by whom a sentence had been passed or confirmed under Regulation VII. 1832, deemed it proper that it should be modified or mitigated, stating the alteration which was considered requisite. The Commissioners have no remarks to offer on this subject. The power of remitting any punishment, either wholly or in part, is understood to be inherent in the government, and there does not seem to be required any legislative provision for regulating the manner in which it shall be exercised.

14. The second resolution is to the effect, that when a military court or a punchayet assembled by the officer in charge of the police, may exceed their jurisdiction, a summary appeal should be allowed to the zillah judge, who should

No. III.–Part 1.
Military Courts of Request.

be authorised, upon receiving such an appeal, to require the officer in charge of the police to stay the execution of the decree or award complained against, and to forward a copy of it to him, and if he should be satisfied, upon consideration of the decree or award, that the matter adjudicated was not subject to the jurisdiction of the court or punchayet, to pass an order quashing the proceedings. The Commissioners entirely concur in the propriety of providing an appeal of the nature above described.

15. The third communication relates to the question whether, with reference to Clause 2, Sec. 21, Regulation VII. 1832, military courts and punchayets, assembled under sec. 42 of the same, could take cognizance of claims to real property situated in cantonments beyond the frontier. The circumstances given by the Sudder Adawlut on this subject have already been adverted to in para. 6 of this letter, and the question has now been determined in the affirmative.

The Commissioners are of opinion that cases involving the right to real property, situated in British cantonments beyond the frontier, and generally in British cantonments in provinces, where no British civil courts may have been established, should be cognizable by military courts, and they think that courts of the nature of those specified in Clause 3, Sec. 42, of Regulation VII. 1832, of the Madras code, would be well qualified to decide such suits.

16. In conclusion, I am directed to observe that although from the tenor of the references under reply, the Commissioners were led to infer that it was the intention of government that the subjects of them should be taken up in their due course in the general revision of those branches of the law with which they are connected, they have yet been induced to submit their opinions on most of the points treated of, from a knowledge that a draft of new articles of war for the native troops, including rules for military courts of request, is now under the consideration of government. That draft it will be recollected, was referred to the Law Commission, and returned to you with my letter of the 12th January last, and on the 12th of February I had the honour of communicating some additional remarks on the same subject. The Commissioners, however, would wish it to be understood, that the opinions which they now submit on the several points discussed, have been formed with reference to the law as it now exists under the Madras presidency, and that they reserve their sentiments on the general principles of that law, to a future and more comprehensive examination of its merits.

I have, &c.
(signed) *J. C. C. Sutherland,*
Secretary.

Indian Law Commission,
15 June 1838.

(No. 2698,)

Legis. Cons.
12 August 1839.
No. 16.

From *J. Thomason*, Esq. Officiating Secretary to the Governor-general, N. W. P. to *T. H. Maddock*. Esq. Officiating Secretary to the Government of India, Legislative Department, *Fort William.*

Sir,

Judicial Dep.

It being understood that the construction of the military court of request is now under the consideration of the Honourable the President in Council, in the Legislative Department, I am directed by the Right honourable the Governor-general to transmit the copy of a petition from Mr. J. Rawlins, a resident at Agra, for such attention as the general points noticed in it may be considered to deserve.

I have, &c.
(signed) *J. Thomason,*
Offg Secy to the Governor-general N. W. P.

Simla, 13 October 1838.

To his Excellency the Right honourable Lord *Auckland,* Governor-general of British India, &c. &c. &c.

The Petition of *John Rawlins,*

Most humbly showeth,

That your Lordship's petitioner (a clerk or writer by occupation, and at present a resident of Agra, in which station he has resided for years, in the city,

only

only occasionally as a visitor, abiding in the military cantonments amongst his relations and friends, and possessing some landed property in both the civil and military jurisdictions; in the latter in the range of the old Sudder bazaar adjoining the city), had, on the 4th of the present month of September, while residing at Boileau Gunge, in the suburbs of the city and zillah of Agra, within the bounds of the civil jurisdiction, a summons served on him by an orderly sepoy, directing him to appear before a military court of request, to defend a complaint laid against him, and which would assemble the next day at 10 o'clock, A. M., at Colonel Buckley, the president's quarters. The summons was signed by Ensign Nation, as adjutant of the week. *Vide* No. 1.

Your Excellency's petitioner begs to state, that after being served with the summons, he wrote on a paper presented to him by the orderly for signing the receipt and delivery of the said summons, that he was a resident of the civil lines, and therefore not amenable to a military court; notwithstanding which, the said court decreed the suit *ex parte* against your petitioner, because he did not appear to defend the suit. No. 2.

Your Lordship will be graciously pleased to consider the subjects now laid before your Excellency's notice by your Lordship's petitioner, and which he engages himself to prove, if required.

Your Excellency's petitioner begs leave most humbly to state, that he knowingly and wilfully did not attend the said court, as he was beyond the sphere of its control, and subject to the civil law courts, whither, if summoned, he would have gladly appeared. It is not barely having the case decreed against him, that has induced him to obtrude on your Lordship's notice, but its subsequent effect, as the peons of the military authorities, under Captain Ramsay, the superintendent of the military police, are at present on the look-out after your Lordship's petitioner to seize him, in order that the award of the military court may be enforced. While your Lordship's petitioner remains within the civil lines, he is beyond their control, but as the system of laying perdue is not only both repugnant and hateful to his ideas and feelings, but likewise a tacit acknowledgment of the power of the said court over him, he feels himself constrained to represent the case for your Lordship's consideration, as, should any occasion call him within the verge of the military lines, he would be arrested, and though after justice might be done him, the disgrace that would be inflicted would be indelible.

The above is not the first or only instance by which your Lordship's petitioner has become a sufferer from the awards of a military tribunal. In the month of June last past, when your Excellency's petitioner was a temporary resident of the military cantonment, superintending the mercantile business of a relation who had gone down to Calcutta, he was most unexpectedly ordered by Captain Ramsay, sub-assistant commissary-general, to pay the sum of rupees nine and four annas; being the amount of two awards of the same military court of request decreed against him, though at the same time your Lordship's petitioner was totally ignorant of such suits having been laid against him, and also by whom, when, and on what account; and on application to the major of brigade, Captain Maule, the only satisfaction gained was, "that some mistake or inadvertency had occurred in your not being served with a notice;" and without any show of justice, he was obliged either to pay, or abide the alternative of having his property seized and sold to make good the award of the court. Being obliged *nolens volens* to pay, he did so, and delivered the money into the hands of Captain Ramsay personally, at the same time stating the hardness of his case, requesting investigation and fair play, but uselessly. *Vide* Nos. 3 & 4. *Vide* No. 5.

To this present moment your petitioner is unaware of the nature of the debt, how and when incurred, and to whom it was due.

Your Lordship's petitioner was once served with a summons, after the court had sat, but as the plaintiff was fortunately absent, it was thrown out.

Your Excellency's petitioner does not wish to engross too much of your Lordship's valuable time; but in the above cases where else can be obtained redress? The civil power, he believes, are precluded from interfering, and so are the military, at least it would seem so, as the present Commander-in-chief, when petitioned by a merchant at Allahabad, replied that he had no power to interfere with the awards of a military court of requests, they being established by Act of Parliament.

Your petitioner only craves strict and impartial justice may be doled out to him,

No. I.-Part 1.
Military Courts of Request.

him, as in one case, the court have, to say the least, acted heedlessly, in deciding a suit without first ascertaining whether the defendant was liable or amenable to their authority or not; in the second one, unjustly, as they did not give the defendant an opportunity to defend himself. The last instance speaks for itself and requires no comment.

Your Lordship's petitioner does not wish to enter into a specification of the many disagreeable inconveniences a non-military individual is subject to by attendance and amenability to the above kind of courts, as they would fill a volume; but he cannot refrain from intimating for your Lordship's information, the reason why natives are always so peculiarly eager to complain before it. The reason is simple, it costs nothing, and there is no appeal from its decision,* as in the civil court, they would have to purchase stamps, besides other expenses incidental to civil suits.

Your petitioner begs leave to solicit most humbly that your Excellency will take his case into consideration, and grant him redress, or some rule be laid down to prevent a further recurrence of such applications for justice, as the benefit will not only be felt by your Lordship's petitioner, but will extend itself to the community at large, who are unwilling to come forward, lest they should not obtain redress, and as in duty bound, your Lordship's petitioner will ever pray.

(signed) *John Rawlins.*

(True copy.)

(signed) *J. Thomason,*
Offg Secy to the Governor-general,
N. W. P.

Agra, 19 September 1838.

Legis. Cons. 12 August 1839. No. 17.

(No. 285.)

EXTRACT from the Proceedings of the Honourable the President in Council in the Military Department, dated 18 June 1838.

READ a letter (No. 1483), from the Secretary to government, Military Department at Bombay, dated, the 22d ultimo, transmitting copy of the Regulations under which military courts are convened, and their proceedings conducted, under that presidency.

Ordered, that the foregoing letter from the secretary to government in the Military Department at Bombay, and the copy of Regulations which accompanied it, be transmitted in original to the Legislative Department, with reference to extract No. 17 from that department, under date the 6th November last.

Ordered also, that the original papers be returned to this department when no longer required.

(True extract.)

(signed) *J. Stuart,* Lieut.-colonel
Offg Secy to the Government of India,
Military Department.

(No. 1483.—Military Department.)

Legis. Cons. 12 August 1839. No. 18. Enclosure.

From *E. M. Wood,* Lieutenant-colonel, Secretary to Government, to the Officiating Secretary to the Government of India at *Fort William.*

Sir,

I AM directed by the Right honourable the Governor in Council to acknowledge the receipt of your letter of the 11th of December last (No. 139), with enclosure, and to transmit to you the accompanying copy of the Regulations under which military courts of request are convened, and their proceedings conducted under this presidency, as therein called for.

I have, &c.

(signed) *E. M. Wood,* Lieut.-colonel,
Secretary to Government.

Bombay Castle, 22 May 1838.

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* If against Europeans who are non-military, the magistrate, as justice of the peace, confirms it, from which sentence the appeal only lies before the Supreme Court, *vide* 53 Geo. 3, and consequently beyond the reach of a poor man. Even by resolutions of 1820, the civil court will confirm the same, without inquiry as to their amenability or otherwise, and sell their property to make it good.

No. III.-Part 1.
Military Courts of Request.

Legis. Cons. 12 August 1839. No. 19. Enclosure.

Extract from the Bombay Regulations, No. XXII., A.D. 1827.

Chapter II.

Of the Military Court of Request for deciding Civil Actions for Debt, and of the Jurisdiction to be exercised by Courts Martial in Criminal Offences.

A military court of request (the superintendent of bazaars occasionally supplying its place) may try certain actions for debt.

Section 7, Clause 1. Wherever any of the Company's forces may be employed beyond the jurisdiction of the court of request established at the presidency, actions for debt and all personal actions not exceeding four hundred (400) Bombay rupees in amount against a person belonging, both where the suit is instituted, and also when the cause of action arose, to any of the descriptions stated in section 3, clause 1 of this Regulation shall be cognizable before a court of request composed of military officers, and not by the ordinary tribunals within the territories subordinate to Bombay; provided, however, that the superintendent of bazaars, or other staff officer when there is no superintendent, may be employed in lieu of the said court, as denoted in section 32.

How convened and composed.

Clause 2. The commanding officer of any station or cantonment is authorised to convene such courts, which shall be composed (according to the orders of the Commander-in-chief or commanding officer of the forces for the time being, or, in the absence of such orders, according to the discretion of the commanding officer), either of not less than three European commissioned officers, or of not less than three native commissioned officers, with an European commissioned officer to superintend and record the proceedings.

Its forms of procedure.

Clause 3. Each member of the court shall take an oath, according to his religious tenets, to do impartial justice; the forms, proceedings, and records, shall be as usual in courts martial, and the attendance and evidence of witnesses, not subject to military law, shall be procured under the rules contained in section 5 of this Regulation.

How the decisions are to be executed.

Section 8, Clause 1. It shall be competent to the court, on finding any debt or damage due, to award execution of the decision, either generally, or by directing that the whole or any part of the amount be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor in the current or any future month.

By seizure and sale of effects that are,

Clause 2. And if the execution be awarded generally, the amount, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the court.

Or subsequently may be in camp.

Clause 3. And if sufficient goods be not so found, then any which may subsequently be found within the said limits shall be liable to be seized and sold as above said, in satisfaction of the remainder of the debt or damage, or any public money or sum not exceeding the half-pay accruing to the debtor shall be stopped in liquidation of the said debt or damage; and if such debtor shall not receive pay as an officer or soldier, or from any public department, he shall be arrested by written order of the commanding officer, and imprisoned in some convenient place within the said limits for a period of two (2) months, unless the amount be sooner paid.

By stoppages.

Or by Imprisonment.

Presidency Division of the Army, Head-quarters, Bombay, 16 November 1827.

Sir,

I have the honour to forward to you, for the consideration of his Excellency the Commander-in-chief, a letter, with four accompaniments from Major Roome, regarding a court of request held in the 20th regiment native infantry, at Bhewndy.

Having requested of the Judge Advocate-general to favour me with his opinion on the subject of these papers, I beg leave to hand you also a copy of the letter conveying that officer's observations on the occasion.

No. III.–Part 1. Military Courts of Request.

As a doubt exists in regard to the law by which courts of this nature are to regulate their proceedings, I beg to be favoured with instructions on this point, in order that one uniform mode for trial and taking of evidence may be attended to in future.

As the parties now concerned have been placed in arrest and put in confinement, in consequence of being charged with the crime of perjury, which cannot be attached to them, I shall direct Major Roome to cause the prisoners to be instantly released, and I await such commands as his Excellency may be pleased to communicate for my further guidance.

I have, &c.
(signed) *D. Leighton*,
Lieut.-col. Com^g Pres^y Div^n.

To the Adj.-gen. of the Army,
Bombay.

From *Vans Kennedy*, Esq. Judge Advocate-general, to the Officer commandin the Presidency Division of the Army.

Sir,

I HAVE the honour of returning the accompanying papers relating to a court of request held at Bhewndy, and beg leave to state for your consideration the following remarks on the subject.

No point in English law is more clearly laid down than that in civil actions, the parties in a cause cannot be admitted as witnesses; for Peake, in his Law of Evidence, p. 157, says, "From what has been already said, it may be taken as a general rule, that a party in a cause cannot be examined as a witness, for he is in the highest degree interested in it;" and Phillipps, in his work on the same subject, p. 32–35, also remarks, "A party to the suit on record cannot be witness for himself for a joint suitor, nor against the adverse party, on account of the immediate and direct interest which he has in the event, either from having a certain benefit or loss, or from being liable to costs. As a party to the suit is not suffered to be witness in support of his own interest, so he is never compelled in courts of law to give evidence for the opposite party against himself."

According to the English law, therefore, there can be no doubt of the illegality of these proceedings; but in the second chapter of the government Regulation XXII. of A. D. 1827, nothing whatever is said with respect to the law of evidence which is to be observed by courts of request, and it is, therefore, uncertain whether government intended that they should regulate their proceedings by the law of England or by the Regulations established for the observance of the courts of Dewanee Adawlut. If the latter, however, be the case, as seems most likely, it is thus laid down in the 28th section of the government Regulation IV. of A. D. 1827:

"Clause 1. If one of the parties should refer the truth of the whole matter in dispute, or of any item in the same, or of any material fact, to the oath of the other party, the judgment of the court shall be governed by the oath of such party, if he consent to take the oath, whether admitting or denying the matter so referred to him.

"Clause 2. If each party refer the same matter to the oath of the other, the court shall decide to which of them the oath is to be first tendered." Until, therefore, this point be determined, it is obviously impossible to decide on the proper manner of proceeding which ought to be adopted by courts of request; but in the present instance, the consent of the party to whom the oath was administered not having been obtained, the court of request has, under either supposition, acted illegally.

The opinion of the superintending officer of this court that Jemedar Ragnac and Private Ramnac Bhagnac have been guilty of perjury, is most extraordinary, for it rests on no sufficient grounds. It is only evident that all the three persons examined have deposed in a manner entirely different, and that the court has not done its duty in having omitted to ascertain the real merits of the case by other testimony. Similar remarks apply to the second case of Esoo Patha Sing *versus* Shaik Ismail. The superintending officer seems to have entirely forgotten that no person, particularly a native officer, ought to be accused of perjury except on the clearest proof that he had given false testimony knowingly and wilfully.

wilfully. But had perjury occurred in these instances, the mode of proceeding to be adopted in consequence remains subject to doubt; for in the third chapter of the government Regulation, the giving false testimony on oath before a court martial is included among the offences relating to the Military Department, but cognizableby a civil court; as, however, the court of request is nowhere in this Regulation called a court martial, it is obviously uncertain whether or not the 15th section of that Regulation applies to the giving of false testimony in a court of request.

I have, &c.

Bombay, 15 Nov. 1827. (signed) *Vans Kennedy*,
Judge Advocate-general.

(True copy.)

(signed) *Thomas Gordon*,
Major of Brigade, Pres^{y} Div^{n} of the Army.

(No. 3154—Military Department.)

Sir, Bombay Castle, 14 Dec. 1827.

I am directed to acknowledge the receipt of your letter of the 3d instant, (No. 447,) and in reply to state that the courts of request established by Regulation XXII. having jurisdiction over those persons only who might have been subjected to the jurisdiction of the country courts, and were previously so, should regulate their proceedings, as Colonel Kennedy suggests, as far as may be practicable by the practice of the country courts.

False swearing before any authority empowered by Regulation to administer an oath, is perjury by Regulation XIV. Section 16, so that any person committing that crime before a military court of request, whose proceedings by Regulation XXII. Section 7, Clause 3, are the same as those of courts martial (for which on this point, see section 5,) would be sent to the civil authorities, with a certainty it appears of meeting with punishment if the offence were proved.

I have, &c.
(signed) *W. Newnham*,
Chief Secretary.

P. S.—The original papers accompanying your letter are herewith returned.

Head-quarters, Bombay, 17 January 1828.

Extract from General Orders by the Honourable the Governor in Council.

Bombay Castle, 16 January 1828.

Third. Native military courts of request will also, in receiving evidence, and in making their awards, be guided by the local or provincial law of the country as administered under the Regulations of government.

By Order of the Honourable the Governor in Council.

(signed) *W. Newnham*,
Chief Secretary.

(No. 393 of 1831.)

Head-quarters, Bombay, 26 October 1831.

Extract from General Orders by the Right honourable the Governor in Council.

Bombay Castle, 25 October 1831.

The Right honourable the Governor in Council is pleased to direct that the following Regulation be published to the army in General Orders.

No. III.–Part 1. Military Courts of Request.

(Military Branch.)

Regulation XVII. A.D. 1831.

(Supplement I. to Regulation XXII. A.D. 1827.)

A Regulation for extending the Powers of the Court of Request, constituted under Clause 1, Sect. 7, Regulation XXII. A.D. 1827, when sitting in places beyond the British Territory, passed by the Right honourable the Governor in Council of Bombay, on the 14th day of September 1831, corresponding with the 8th Bhadrapied Sood sumbut or Vikramaget, Era 1887, Sabbahan 1753, Fusley 1241, Soorun 1232, and 7th Rubee-ul-Akhur 1247, of the Hijree.

Preamble. Whereas great hinderance and obstruction to the recovery of just and lawful claims against persons residing within the limits of cantonments and military stations beyond the British territories, having been found to exist, in consequence of the sums indebted being of larger amount than can be taken cognizance of by the court of request, constituted under Clause 1, Sect. 7, Regulation XXII. A.D. 1827, it has been deemed expedient, in order to meet this exigency, that the powers of the court of request, when sitting in places beyond the British territory, be extended; the following rule has therefore been enacted, to have effect from the date of promulgation.

The limitation (Rs. 400) of claims cognizable before a court of request, declared not to be applicable when such court is sitting in places beyond the British territory.

Sect. 1. It is hereby declared, in modification of Clause 1, Sect. 7, Regulation XXII. A.D. 1827, that the limitation of claims cognizable by courts of requests under that section, to sums not exceeding Bombay rupees four hundred (400), shall not be held applicable to those courts when sitting in places beyond the British territories, but claims of the nature therein described shall be cognizable, whatever may be the amount.

By Order of the Right honourable the Governor in Council.

(signed) *C. Norris*,
Chief Secretary.

(True extract and copies.)

(signed) *S. Powell*,
Lieutenant-colonel, Adj.-gen. of the Army.

Head-quarters, Bombay, 1 April 1835.

General Orders by the Commander-in-chief.

1. The Commander-in-chief is pleased to republish the following General Order by his Excellency the Commander-in-chief of the Madras army, for the constitution of military courts of request, and to declare its provisions equally applicable to this presidency.

General Orders by his Excellency the Commander-in-chief.

Head-quarters, Choultry Plain, 10 February 1835.

1. The Commander-in-chief is pleased to publish the following memoranda for the constitution of military courts of request, assembled under the provisions of Act 4 Geo. 4, c. 81, and for the guidance and disposal of their proceedings.

1. In all practicable cases, a field officer is to be detailed as president of such courts; and captains or subalterns, of not less than eight years' standing, as members.

2. The court having met, the members and president are duly sworn upon each trial separately.

3. The plaintiff and defendant being both in court, the court inquires of the plaintiff (not upon oath) what the nature of his demand is; and on this being stated, interrogates the defendant (not upon oath) as to whether he owns the debt, and acquiesces in the statement of the plaintiff or not. This preliminary examination of the parties is to be conducted by the court to such extent as may appear to be desirable; and it is to be remembered that such declarations as either party may make against his own interest, although not upon oath, are good evidence against himself.

4. Should the defendant acknowledge the debt, a decree is then passed and recorded accordingly, and the court closes its proceedings on the case.

5. Should the defendant deny the debt, the plaintiff is called upon for his proofs, and his witnesses being produced, are examined on oath by the court, subject to cross-examination by the defendant, and their evidence recorded.

6. The

6. The defendant is then, in like manner, called upon, and the evidence of the witnesses on the defence, subject to cross-examination by the plaintiff, is duly recorded.

7. The court then decides according to the evidence before it, and the decision is entered upon the record; special attention being given, in the event of finding any debt or damage due, to the provisions of section 57 of 4 Geo. 4, c. 81, and to the mode of proceeding therein prescribed.

8. Although neither party can be sworn, in support of his own cause, at his own desire, yet either party may be required by the other to give answer upon oath, or may be ordered by the court so to do. But it is only usual for the court to resort to such a measure when a decision is about to be pronounced upon the statements of the parties only, without evidence of any kind, or when the evidence adduced is altogether insufficient and unsatisfactory; in such cases the court directs such party to be sworn, as it may deem best.

9. If either party, having been sworn at the request of the other, make such answer as may be prejudicial to the cause of the adverse party, such evidence must nevertheless be received and recorded, and due weight given to it accordingly.

10. If a party refuse to be sworn when requested by the other party, or ordered by the court, such refusal is to be deemed contumacious, and tantamount to a confession against himself, and judgment is to be passed and recorded against him accordingly.

11. One party having been sworn at the request of the other, or by order of the court, the other party is not in any case to be sworn. The plaintiff may, if he please, require the defendant to be sworn in support of the prosecution, and this precludes the defendant from making a like demand on the defence.

12. A court of request cannot, in any case, decide suits touching land or houses; neither can it, on any pretence, direct such to be seized or sold, in satisfaction of its judgments or decrees.

13. A court of request is essentially a court of equity and conscience, not bound down by the same strictness of rules and form which attaches to the courts of law generally, and the members thereof are to recollect that they are to make such inquiry as may enable them, according to their conscience, to do entire justice to both parties. A claim for money due, for instance, might be met by a counter statement of damage done by the adverse party; and the court would then make inquiry and decide according to the equity of the case. *A.* being servant of *B.*, claims wages due; *B.* admits that the wages are due, but states that certain articles intrusted to the said *A.* his servant, of equal or greater value than the wages due, have been wantonly lost or destroyed by him; the court would, thereupon, require evidence, first, as to the actual intrusting of the articles in question to *A.*, and secondly, as to their value, and the circumstances under which they were lost or destroyed, and then pronounce judgment accordingly.

☞ In all places where the said Company's forces now are or may be employed, or where any body of His Majesty's forces may be serving with the forces of the said Company, situate beyond the jurisdiction of the courts of request established at the cities of Calcutta, Madras, and Bombay respectively, actions of debt, and all personal actions against such officers, non-commissioned officers, or soldiers, all persons licensed to act as sutlers to any corps or detachment, or at any station or cantonment, or other persons amenable to the provisions of this Act, or resident within the limits of a military cantonment, shall be cognizable before a court of request composed of military officers, and not elsewhere; provided the value in question shall not exceed 400 sicca rupees, and that the defendant was a person of the above description when the cause of action arose; which court the commanding officer of any station or cantonment is hereby authorized or empowered to convene; and the said court shall, in all practicable cases, consist of five commissioned officers, and in no instance of less than three, and the president thereof shall not be under the rank of a captain; and every member assisting at any such court, before any proceedings to be had before it, shall take the following oath upon the Holy Evangelists, which oath shall be administered by the president of the court to the other members thereof, and to the president by any member having first taken the said oath; (that is to say,)

"I swear, that I will duly administer justice according to the evidence in the matter that shall be brought before me.

"So help me God."

And every witness before any such court shall be examined on oath, which such courts are hereby authorised to administer, or if natives of the East Indies, on oath or solemn declaration, as the circumstances of the case may require; and it shall be competent for such courts, upon finding any debt or damage due, either to award execution thereof generally, or to direct that the whole or any part thereof shall be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor in the current or any future month; and in case the execution shall be awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the court; and the goods of the debtor, if found within the limits of the Company's garrison or cantonment to which the debtor shall belong at any subsequent time, shall be liable to be seized and sold in satisfaction of any remainder of such debt or damage; and if sufficient goods shall not be found within the limits of the camp, garrison, or cantonment, then any public money, or any sum not exceeding the half-pay accruing to the debtor, shall be stopped in liquidation of such debt or damage; and if such debtor shall not receive pay as an officer or soldier, or from any public department, but be a sutler, servant, or follower, he shall be arrested, by like order of the commanding officer, and imprisoned in some convenient place within the military boundaries, for the space of two months, unless the debt be sooner paid.

No. III.–Part 1.
Military Courts of Request.

14. No creditor can be allowed to divide his demand against the same person into several suits, for the purpose of reducing it within the jurisdiction of a court of request, but if he be willing to limit and restrict his entire demand to the sum of 400 rupees, and to quit claim to the surplus of debt over and above the said sum, then his suit may be so admitted accordingly.

15. The statements of the parties, as well as all evidence admitted by military courts of request, are invariably to be entered on the record.

16. The proceedings having been concluded on the particular case, are to be sent to the commanding officer, in order to the judgment of the court being duly carried into effect.

17. The proceedings of the military courts of request are to be recorded separately upon each trial, and the record is finally to be deposited in the station or cantonment office.

(signed) *T. H. S. Conway*,
Adjutant-general of the Army.

(No. 180.)

Legis. Cons. 12 August 1839. No. 20.

EXTRACT from the Proceedings of the Honourable the President in Council, in the Military Department, under date the 8th October 1838.

READ a letter (No. 2981) from the Secretary to Government, Military Department, at Fort St. George, dated the 11th ultimo, transmitting a Report from the Judge Advocate-general of the Madras army, accompanied by three Appendices, upon the laws and regulations regarding courts of request and courts martial for civil suits.

Ordered, that the foregoing letter from the Secretary to Government, Military Department, at Fort St. George, and its enclosures, be transmitted in original to the Legislative Department, in continuation of Extract (No. 285), under date the 18th June last.

Ordered, that the original papers be returned to this department when no longer required.

(True extract.)

(signed) *J. Stuart*, Lieut.-colonel,
Officiating Secretary to the Government of India,
Military Department.

(No. 2981.—Military Department.)

Legis. Cons. 12 August 1839. No. 21. Enclosure.

From Lieutenant-colonel *S. W. Steel*, Secretary to Government, Fort St. George, to the Secretary to the Government of India, Military Department, dated Fort St. George, the 11th September 1838.

Sir,

I AM directed by the Right honourable the Governor in Council to transmit herewith the accompanying Report, prepared by the Judge Advocate-general, regarding military courts of request, as called for in your despatch (No. 138), dated the 11th December 1837.

I have, &c.
(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

Legis. Cons. 12 August 1839 No. 22. Enclosure.

From *R. Alexander*, Esq. Judge Advocate-general, to his Excellency Lieutenant-general Sir *Peregrine Maitland*, K.C.B., Commander-in-chief, dated 13th August 1838.

Sir,

IN obedience to your Excellency's orders, I have the honour to submit a Report upon the laws and regulations regarding courts of request and courts martial for civil suits, and upon the facts and results exhibited in the several papers which have been forwarded to me.

1. Section

1. Section 57 of the 4 Geo. 4, c. 81, contains the law generally applicable to the European troops serving the East India Company. Laws and regulations in force at present.

2. The 7th article, 12th section, of the articles of war for the native army, authorizes courts martial to take cognizance of actions of debt for sums not exceeding 200 rupees, which maximum is extended by Section 21, Regulation VII. of 1832, to 400 rupees.

3. Regulation VII. of 1832, rescinds all former Regulations, and is framed for the more effectual administration of justice, and of the police at the stations where military bazaars are established, and at certain other military stations, and in military forces in the field, as well as for the extension of the powers of courts martial. Laws and Regulations.

4. Memoranda for the constitution and guidance of courts of request, assembled under the provisions of 4 Geo. 4, c. 81, which are of general application to courts martial, held under the provisions of the native articles of war and Regulation of 1832, are contained in G. O. C. C. 10th February 1835, which cancel all previous orders on the subject.

5. A general order by the Commander-in-chief, 25 July 1835, authorizes the prosecution of suits by any person duly authorized by plaintiff, when sufficient cause is shown for his being unable to attend.

6. The above are the laws and regulations now in force, and upon these I proceed to report, with occasional reference to decisions by the Court of Sudder Udawlut, and to the other official documents now before me.

7. When troops are stationed within the Company's territories, and access can be had to the civil courts, to sue for debts beyond 400 rupees, as well as to appeal from decisions by punchayet, the assistance and protection of the law is within reach of the creditor, and his interests may be deemed sufficiently secure. Suits with Europeans for sums less than 400 rupees are generally of a simple description, such as arrears of or disputes about house rent, servants' wages, or similar affairs, of which, from the papers before me, it appears that holding out the alternative of a court of requests, generally produces a settlement between the parties. As, however, it is sometimes inevitable to convene such courts, I would urgently submit the necessity of empowering the convening officer to order revision whenever the proceedings or sentence should be defective or illegal, and should the court adhere to its original award, of their referring the case to ulterior authority. Courts within frontier. Necessity of supervision and revision.

8. In treating upon the subject of revision, I will here introduce the opinions given by the Sudder Udawlut, when the question had been brought under the consideration of that court. In an extract from its proceedings, dated 12th August 1834, it is stated that, "as regards civil suits, under Regulation VII. of 1832, whether decided by a court martial, by the officer in charge of police, or by a punchayet, their judgment requires no such approval" (*i. e.* of the commanding officers), "but section 33, in its first clause, expressly declares that they shall be carried into execution only under the orders of the commanding officers." Opinions of Sudder Udawlut on revision, and on the power vested in commanding officers.

9. "Under this provision the judges do not think that a commanding officer can at all interfere in the merits of a civil case, decided by these tribunals, or question the justice or otherwise of their judgments, or revise their proceedings, or modify their decisions; but they are clearly of opinion, that where their judgments are palpably illegal, as where the case is not subject to their jurisdiction, or their judgment is at variance with any express enactment for their guidance, the commanding officer may decline giving orders for execution of their judgment, and that it was in order that he may exercise a supervision to this limited extent that this enactment was made; but want of regularity, or inattention to form, will not, in their opinion, justify any refusal to execute legal judgment; and all refusal must be at the personal responsibility of the officer declining to grant execution."

10. In a letter from the Court of Sudder Udawlut to the Secretary to Government in the Judicial Department, dated 5th December 1834, the second paragraph runs thus: "Upon the question, whether in the event of a refusal to execute the judgment of a military court of requests, on account of such judgment being at variance with some express enactment for the guidance of such courts, it is competent for the convening officers to send back such judgment for revision, or whether a new trial in such cases can by any military authority be granted, the judges are of opinion that, under the law as it now stands,

stands, the duties of convening officer are purely executive; that he may on his own responsibility refuse to execute, but that he cannot in any way interfere with the judgment, and can neither order a revision nor a new trial."

11. These opinions are reiterated in a letter to the Chief Secretary to Government, dated 9th September 1837, in its third paragraph, as follows:— "Under the opinion expressed by the court in their letter addressed to the Chief Secretary to Government, under date 5th December 1834, the commanding officer can neither order a revision nor a new trial, but the court itself may, like other courts, correct the error they have fallen into, and proceed to investigate the suit on its merits, and for this purpose it will be competent to the commanding officer to order the reassembly of the court."

An opinion of the Advocate-general on revision.

12. The Advocate-general having an opinion that courts of request for the adjustment of claims held under section 57, 4 Geo. 4, c. 81, were not liable to revision, did afterwards, on the 13th June 1836, communicate to government, for the information of the Commander-in-chief, that "no inferior courts, such as the military or civil courts of request, have any legal authority to award a new trial in any case which has been once heard and regularly adjudicated upon, under a surmise or suggestion that the judgment awarded was illegal. If indeed no trial at all has been regularly had, but a judgment awarded, without one of the parties having had his opportunity of being heard, through some irregularity or surprise practised, another trial may, in the exercise of sound discretion, be allowed by the convening officer, but not if there has been a hearing and judgment in due course. I was not aware of the system in the Bengal army to award new trials, or of this notorious practice of civil courts of requests; but I am of opinion such system and practice is illegal."

Extract of a Letter from the Adjutant-general of the army, regarding supervision.

13. In addition to these decisions of the Sudder Udawlut, I will adduce a circular letter from the Adjutant-general of the army, dated 14th February 1835, which, after conveying to officers commanding stations and cantonments the substance of the above opinions, concludes with these words: "I am further directed to inform you that the approval or disapproval of the convening officer is not to be affixed to the proceedings of such courts, neither are they to be sent for supervision to the deputies judge advocate-general of districts."

Observations on the Regulations, and the relative situations of commanding and commissariat officers.

14. From the preceding extracts, I would report, for your Excellency's consideration, that the situation of a commanding officer with respect to these courts must in general be unsatisfactory, and often embarrassing. By para. 3, Regulation VII. of 1832, police authority is vested in the officers commanding all stations designated as military bazaar stations, and paragraph 4 vests the immediate charge, which I presume to be the executive charge, of the police in the senior commissariat officer; the actual practice, however, is, that the executive duties are entrusted to the junior commissary, where there are two at a station, and he determines such suits as are within cognizance of the police. Imperfect linguists, inexperienced, and unaccustomed to native litigation, as these junior officers often are, their decisions are, by the opinion of the Sudder Udawlut on Clause 3, of Sec. 21, of Regulation VII. 1832, placed beyond the corrective power of an experienced commander, and this in cases of sufficient importance to involve to an imminent degree the personal security of all, and the pecuniary stability of a majority of the petty dealers and poor inhabitants of large military bazaars.

Difficulties of commanding officers.

15. The admitted power of a commanding officer to refuse execution, may indeed present an inert obstacle to the further progress of illegality or injustice; but as even this can only be exercised on a personal responsibility, it might be a question with some how far it should be incurred, when they are restricted from the use of active means of amendment. It might happen that an officer of high rank and experience would, to the utmost extent that a sense of duty permitted, shrink from or avoid the possibility of a collision, in which he should have to exhibit an unwilling exercise of his authority, to carry into effect the decisions of his subordinates, from which his better judgment might differ.

16. In the preceding paragraph I allude only to that opinion of the Sudder Udawlut, that the commanding officer, as head of the police, has no authority to interfere with, or amend the decisions of, the junior police officer, given under the provisions of Clause 3, Sec. 21, Regulation VII. of 1832, but to show the necessity of revision generally. I would here beg your Excellency's notice of the judgments pronounced in civil cases, which I have attached to this Report, in the Appendix lettered (A); and with reference to such decisions,

as

as well as to the restrictions placed upon the nominal head of the police, it is also to be considered whether, according to the spirit of the letter quoted in the 9th paragraph of this Report, it is competent to the commanding officer to prevent a case going to trial, whatever may be his opinion of its legality or its merits; to me it appears that he has but to order the assembly of the court martial in the requisition of his subordinate.

Regarding the constitution of courts for actions of debt.

17. The erroneous judgments that have sometimes been pronounced by military courts in civil causes may in a degree be attributed to the nature of their constitution. The members in general have no great predilection for a duty in which they feel but secondary professional interest, and, however unconsciously, they are often habitually affected towards the circumstances under which a member of their community, and perhaps a daily companion, appears as defendant against claims to which each of them may have been subjected with different degrees of justice; the debtors may sympathize with a person in his own situation, and it is not unnatural to imagine a bias in proportion to the integrity of an officer's personal transactions with litigious natives, whose dealings have imbued him with a prejudice against their fellows; a mind under the influence of inexperience taken advantage of, of carelessness overreached, and of the effect of attempts at fraud and exaction, whether successful or frustrated, may be liable to judge particular cases by general impressions, and thus frame decisions which savour more of intended equity perverted, than of the strict awards of justice inflexibly administered. The defendant appears before a court with the advantage of a language in common with his judges; he can plead his own cause with all the elaboration of argument; he can meet every objection with an explanation, nor does a comment pass with which he is unacquainted; the plaintiff, on the other hand, appears invidiously before the court, and is dependant upon an interpreter for a dry statement of his claims; he is unconscious of much that may be incidentally remarked against them, and his medium of communication may be ignorant of the very points which, if urged with propriety, would secure the issue of the cause. Such considerations as these appear to show how indispensably necessary is the check of a deliberate and impartial supervision of the proceedings of every court of which European officers are constituents.

That which is meant for equity may fall short of justice.

Comparative advantage of Europeans and natives before courts.

Suggested alteration of Clause 1, Sect. 33, Reg. VII. 1832.

18. I shall conclude my observations with reference to cases within the Company's territories by suggesting a modification of Clause 1, Section 33, Regulation VII. of 1832, so as to permit of a more summary attachment of property to meet the awards of courts martial and punchayets; for when a cause is decided, the long period of 40 days, which is allowed to elapse before execution follows judgment, affords too much time for the fraudulent debtor to remove or conceal his personal property; and I would also suggest that houses, shops, or buildings registered under the provisions of Section 5, of Regulation VII. 1832, should be rendered liable for the liquidation of debts legally decreed to be due, and that all real property situated on ground granted by government for the use of the troops or their followers in cantonments and military stations, should in like manner be liable to seizure in satisfaction of awards by military courts and punchayets.

Stations beyond the frontier.

19. There are four large military cantonments beyond the Madras frontiers, viz. Bangalore, in Mysore, Sekunderabad and Jaulnah, in the Nizam's dominions, and Kamptee, near Nagpoor, besides some posts with single corps.

Lowest numbers of their population.

At Bangalore, Sekunderabad, and Kamptee, the civil population of each may, with sufficient accuracy for the purpose of this Report, be taken at the probably low estimate of 40,000 inhabitants, and at Jaulnah the number may be decreased to about 25,000. In these populations are comprised many merchants and Sahoukars of wealth and respectability, who have extensive business transactions with all parts of India; they are of different countries, and at the advance stations will be found generally to consist of Mawarees, Mahrattas, Zelingees, and such people from Madras and Southern India as have followed our camps.

Description of population.

In consequence of the letter from Mr. Secretary Macnaghten, dated Fort William, 30 January 1837, and addressed to the Chief Secretary to Government at Madras, Section 42, Regulation VII. of 1832, was made applicable to suits for the right or possession of land or other real property arising within cantonments situate beyond the frontiers, and the correspondence in the Political Department with the residents at Hyderabad and Nagpoor settled the question of the subjects of those states being amenable to our civil and criminal jurisdiction,

Sec. 42, Reg. VII. 1832, now applicable.

Subjects of Hyderabad and Nagpoor, when amenable to British jurisdiction.

diction, whenever they reside within the British cantonments. At Bangalore a different system appears to have existed since 1813, regarding which I have copied a memorandum of report drawn up by the officer entrusted with judicial power, and an explanatory letter lately received. These are annexed in Appendix (B.), and regarding them, I beg to report, that on the 8th February 1813, the British resident at Mysore forwarded to the Madras government a sunud from the Rajah of Mysore, empowering Captain Cubbon, the commissariat officer, and his successors, to decide all causes of a minor description within the cantonment of Bangalore, but to refer civil suits above 500 pagodas (1,750 rupees) and cases of murder to the fouzdar of the Rajah.

Regarding Bangalore in Mysore.

Power vested in British subordinates by the Rajah.

Apparent anomaly.

Doubts regarding jurisdiction exercised over British subjects by British officers under foreign authority.

It appears to me to be an anomaly to apply to a foreign power to grant authority for an inferior British officer in an English army to exercise a power of jurisdiction, I believe unprecedented under British administration, over British subjects, for whom and whose circumstances our own Government has framed laws, which are in force at all other stations beyond the frontier; nor am I aware how far any judicial act of a British officer contravening those laws of his own Government which are framed under the paramount authority of Parliament, could be borne out in a supreme court of justice. A more vague warrant than the undated sunud of the Rajah of Mysore can hardly be imagined, and it appears only necessary to refer to Appendix (B.) to show the danger of allowing British subjects to be placed under such administration, which, however reported to work so well, that "it may be questioned whether any other could be introduced more calculated to afford protection and satisfaction to the community, or advantage in every way to the public interests," is at the same time admitted to require sometimes an appeal to those British enactments which it in general totally supersedes. Admitting, however, that the system may have hitherto been attended with results as perfect as reported in the Appendix, it is but necessary to submit to your Excellency's consideration, that if in future years the commissariat officer should be either inexperienced or otherwise incompetent to wield such extensive powers, the same happy effects could hardly be expected.

Which grants power not accordant with our enactments.

Possible disadvantages.

Doubts as to existing arrangements.

Since the sunud was granted in 1813, the authority of the Rajah has been placed in abeyance, and the government of the country placed under a British Commission; but though this must have nullified his other acts, it does not appear to affect the sunud, nor to have provided any more than that did for the line of Captain Cubbon's successors being broken by any arrangement of our Government; nor am I aware whether the power delegated to the Commission differs with respect to British subjects from that which was exercised when a civil interference existed at Hyderabad and Nagpoor, but exercised only over the subjects of those states.

Amount of sums for which suits have been brought within the last five years at Sekunderabad.

At Sekunderabad the number of cases and the amount of property adjudicated upon within the last five years are as follows:—

125 punchayets, held from March 1833 to March 1838, awarded sums amounting to - - -	*Rs.* 65,143	5	8
Amount sued for - - - - - - -	89,826	5	8
51 courts martial, held under Sec. 42, Regulation VII. of 1832, awarded sums amounting to -	83,100	9	–
Amount sued for - - - - - - -	2,05,053	–	–
The highest sum submitted to arbitration by punchayet was - - - - - - -	25,697	9	6
And by court martial - - - - - -	42,667	3	3

There have been only two appeals from punchayets to courts martial during these years.

At Jaulnah.

The records connected with courts of request having been removed from Jaulnah in 1834, and not being at present accessible, I have only been enabled to obtain the number of cases adjudicated by punchayets, from the 1st May 1836 to 20th April 1838, which are 135, and the sums awarded amounting to *Rs.* 11,615. 13. 6.

At Kamptee.

At Kamptee, the number of cases and the amount of property sued for and adjudicated upon within the last five years are as follows:

1,088 Courts of request (European and native):

Property sued for, amounting to - -	*Rs.* 91,946	13	1
Property awarded - - - - - -	65,994	9	11

38	Courts martial held under Section 42, Regulation VII. of 1832: Amount sued for - - -	*Rs.* 53,745	7	11
	Amount awarded - - - - - - -	34,440	9	–
24	Punchayets: Amount sued for - - - -	20,447	12	–
	Ditto - ditto awarded - - - -	10,787	12	6
5	Appeals.			

Importance of tribunals.

The sums which have been adjudicated upon show the importance of the tribunals before which causes must be brought; and what has been before observed with regard to the supervision necessary for courts composed of European officers, applies with particular force beyond the frontier, when it is considered how very rarely any of them are acquainted with the forms or customs of native business, or of the languages in which most of the books and accounts are kept. Nothing but practice upon courts martial in civil cases can give them the requisite knowledge, and this practice must of necessity be slowly, if ever attained, by the opportunities afforded by the rolster. Native officers again, whatever advantage they may have, so far as a knowledge of language is concerned, are otherwise less competent to these duties than are the better educated and more comprehensive-minded Europeans. It will be but in a small minority of cases that the native officer of this army will be found to understand the dialects of commercial transactions. I proceed to offer some suggestions for your Excellency's consideration: in the event of plaintiff or defendant not appearing, it might be advisable in the former case to enter a nonsuit, unless sufficient cause for non-appearance can be shown; should a defendant absent himself without good cause shown for his absence, that a decree be given in favour of plaintiff, and after due time allowed, execution entered on.

Suggestions.

Evidence to be procured from a distant place.

It being often necessary to procure evidence from witnesses at a distance, this might be rendered admissible, or written interrogatories, according to the mode prescribed by Government.

Suggestions.

One party being sworn, it might with reference to Go. C. C. 10th February 1835, be advisable to allow the other party to be put on oath at his own request.

The court should summon witnesses, and for this purpose an interval might be allowed between the time of the suit being preferred and the day of calling it on for trial.

It should be expressly defined that, where a plaintiff holds several promissory notes or bonds, payable at different periods, he may sue for each separately, provided it be within the limited amount. Should debt to one person be due on two accounts, viz. for money lent, and for goods furnished, or articles sold, then may the plaintiff sue for each separately without having the accounts amalgamated to make up the prescribed limit of adjudication. It is desirable that the manner of carrying decrees into effect should be distinctly laid down, and provision made for stoppages of pay in liquidation of decrees when a regiment passes into another range of payment.

The limited time within which actions can be brought before native courts should be defined more exactly than it is at present.

Interest of money.

Twelve per cent. per annum is the utmost interest now recognised. Considering the fluctuating value of money, and the well-known means taken to evade the letter of this established rate, it might be advisable to permit parties to appear before the police magisterial authorities, and in presence of witnesses on both sides, agree to give such interest as might be equivalent to the value of money at the time, the interest agreed upon to be legally recoverable on bond or tumassook. Money now obtains its value by means of "senvaee," and other transactions, which give a fraudulent appearance to business that in reality is fair, and would, if unshackled, be without the appearance of dishonesty.

Goods mortgaged or in pawn.

Goods mortgaged or in pawn are not seizable; it might be permitted that the owners should be advertised to redeem them by a certain time after judgment against defendant, who is the holder, and failing their being redeemed that they should then be publicly sold by auction, and any amount surplus to the liquidation of sums lent on them, should be payable to the owners.

Cross bills.

If defendant has an account against plaintiff it might be allowable for him to enter a cross bill immediately upon receiving notice of action; both suits might be

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be entertained, and judgment given for the sum demanded or balance due, according to circumstances.

Crying down credit.

On the 11th November 1834, it was decided that the restrictive provisions of G. O. G. 30th October 1819, were only applicable to regimental bazaars, and that credit cannot be cried down in sudder bazaars. This places the regimental bazaar at a manifest disadvantage, and the shopkeepers in the dilemma of losing a large proportion of their customers, in consequence of the accommodation that can safely be afforded by dealers in the sudder bazaar, within perhaps a few hundred yards of them; or of securing the custom at the risk of disobedience of orders and the uncertainty of recovering their dues. Every difficulty in the way of obtaining payment of a debt, or the full value that money can command, drives capitalists and traders to subterfuge and evasion, and ultimately is compensated at the expense of the debtor, if he can by any means be made to pay, and if payment cannot be exacted, the alternative is loss, perhaps ruin, to the creditor, or he must be reimbursed by an enhancement of his transactions at the cost of the fair dealer. I would suggest that credit might be cried down at every bazaar within military limits.

Punchayets.

Acceptable as is the theory of punchayet jurisdiction, there are practical evils in the system, regarding which I would beg to submit a few observations.

Possible effects of blended duties on the minds of members of punchayets.

In the military bazaars the magisterial authority is so intimately blended with the interests and views of the department involved in all the commercial transactions and contracts connected with the supplies and extensive pecuniary disbursements of government, that, taking into consideration the well-known and generally-admitted failings of native character, it is hardly within reasonable expectation to find the necessary judicial independence in members of a punchayet, when it is apparent to their imaginations that they have to decide in opposition to interests with which it is difficult for them not to identify the ruling authority. The impossibility of bringing a man of high caste to sit in punchayet with the pariah classes operates to the disadvantage of the latter, upon whom it becomes necessary to induce members of caste to espouse their causes, and who, after all, may more than possibly be imbued with prejudices detrimental to their clients. A man of high character and known integrity will be so much sought as member of a punchayet, that his time, if given up as required, would be lost to the conducting of his own affairs. Such a person is also too often obnoxious to the ill feelings of those against whom he may have decided, and this is a consideration which I have known to press upon a person of the character now considered, and whose interest was of course to conciliate in aid of his commercial transactions.

Difficulties in punchayets.

If plaintiff and defendant cannot agree to a punchayet chosen by the sirkar, suggests that the court be increased to seven members.

A punchayet consisting of five members has two chosen by each party, and the fifth by the sirkar. I would suggest that the court should always consist of seven members, four to be chosen as at present, and three by the convening authority. As now constituted, each litigant names what are in reality two advocates, who sit avowedly to carry through their client's cause; the fifth member having the casting vote, and being the only presumed impartial person, is virtually the arbitrator. For reference to a court martial, on an appeal against partiality, the appellant may be sure of two out of five to support his appeal to an European court, before which whatever may be gained by the independence and integrity of the judges, is met by the inconvenience to which plaintiff and defendant are both subjected from the difficulties the officers must feel in their endeavours to adjudicate upon the intricacies of transactions, and settlements of accounts, with which it is, as I have before stated, almost impossible for them to be acquainted, and in which they are incomparably less conversant than the members of a punchayet; with seven members a punchayet would always be able to command a majority by means of members without apparent interest in the cause.

Allusion to possible advantage of separating magisterial duties from extensive commercial transactions.

Withdrawing men from their business, if frequently resorted to, renders membership of a punchayet a very heavy tax. I hope it is not going beyond what is expected from this Report to advert distantly and respectfully to the probable advantage of having magisterial authority perfectly independent of departmental interests and duties; and it might then be not unworthy of consideration whether a superintendent of police, acting on well-defined laws, under the orders of the supreme military authority, might not be assisted in civil adjudication by two judicial assessors on fixed salaries. All suits referred to a tribunal composed of these authorities to be subject to a small per-centage charge,

Judicial assessors.

charge, which, with fines to be exacted upon clear proof of fraudulent appeals, might be carried to the credit of government as an off-set, if not a repayment for the fixed and independent salaries of the assessors. It may be presumed that some arrangement of this kind would be acceptable to those whose security would be so much the greater; and where suits arise in which the public interests were at all implicated, it would be satisfactory to the government and to its subjects to have them decided where the strongest advocacy which departmental zeal might educe could not be mistaken for *ex parte* prepossession in favour of the important duties confided to an officer in one situation against which he might have to decide objections in another.

Imprisonment in the field.

With reference to Sect. 33, Regulation VII. of 1832, I have to submit whether its provisions are the best that may be applied to ultra frontier stations, and particularly to the bazaars of large forces in the field, where imprisonment must be inconvenient, and the more so in proportion to its period. If troops are stationary, a fraudulent debtor, having concealed his property, may undergo two months' imprisonment, with the knowledge that his creditor is unable or unwilling to bear the expense of his support in a civil gaol, even if there were ready means of sending him to one. When troops are in the field, the possibility of doing so would rarely occur, and I doubt whether there has ever been an instance of such transmission from beyond the frontier.

Facility of fraud.

All contracts to be written in the languages of contracting parties.

All contracts and agreements for value to be received between Europeans and natives, should be written in the languages of both parties.

Improvement of the judicial system would advantageously compensate ad valorem assessments of land in military cantonments, not within regimental limits.

In the event of an amelioration of the present system of civil adjudication in military bazaars, a fund might very advantageously be raised to defray the expense by an assessment on the land now granted gratuitously in the sudder bazaar. Regimental bazaars could not bear this assessment, nor would it be according to the spirit in which regimental ground is given; but a moderate tax might be laid on in proportion to the convenience of location in the vicinity of the markets, or for commercial purposes. In many, and I believe in most cantonments, large tracts are required by commissariat writers and other public servants, which are cultivated for private use. If such appropriation of ground within military limits be not altogether objectionable, and should it not be deemed advisable, on account of general salubrity, and for other reasons, to forbid all cultivation except in the compounds attached to bungalows, then might these grounds be fairly liable to a land-tax; and that, in addition to what would be raised from the householders in the sudder bazaar and elsewhere, not within regimental limits, might be applied to render residence in military cantonments and ultra-frontier stations more secure and desirable than it now is, with the acknowledged advantages at present allowed.

In conclusion, I beg to explain to your Excellency that the delay which has occurred in drawing up this report has been occasioned by the necessity of applying to officers commanding stations for information on the working of the present system, and that the last communication on the subject only reached me a few days ago.

I have, &c.
(signed) *R. Alexander*,
Judge Advocate-general.

Judge Advocate-general's Office,
Head-Quarters, Bangalore,
13 August 1838.

Appendix (A.)

Legis. Cons. 12 August 1839. No. 23. Enclosure.

Case 1.—*A.* as agent on behalf of *B.* sowcar at Kamptee, versus *Captain C.*, for Nagpoor rupees 428. This suit originated in a protested order for Nagpoor rupees 374, with interest thereupon at the rate of 12 per cent. per annum, deducting what was necessary to bring the amount within cognizance of military courts of request. The protested note was produced before the court, and evidence tendered in support of the claim for interest, but declined by the court. The defendant admitted the principal, but demurred to the charge of interest, on the plea that when he granted the order to the sowcar's agent, the latter was distinctly informed that the amount would be paid only after all his (the defendant's) other creditors at Kamptee should have been paid; and in support of this plea the vakeel of the regiment was called, who swore to the circumstances. The court awarded the amount of principal without interest; and directed that the same "be paid after the claims of all the defendant's creditors at Kamptee shall be satisfied."

The

The demand against the defendant in this suit was brought to the notice of the superintendent of police at Kamptee about the 6th of March 1835, the debt having been then of long standing, and defendant having failed in repeated promises. Defendant was called upon for reply, with an intimation from the superintendent that, as the regiment was about to march from the station, and some difficulty might exist in paying the full amount, if he would specify any monthly instalment that he could conveniently afford, and pledge himself for its regular remittance, he (the superintendent) would endeavour to procure complainant's consent to the arrangement. Defendant declined this, and expressed great indignation at the complaint having been preferred against him, alleging that he had informed the sowcar that he intended settling with him before quitting the station, and that such was still his intention. The regiment marched three days afterwards, and the day following complainant again appeared at the police-office, and stated that he had remained at defendant's quarters the whole of the preceding day and night, and accompanied the regiment to its first stage, but had failed in obtaining any settlement of his account. The foregoing particulars were communicated to the officer commanding the regiment, with an intimation that unless an immediate satisfactory arrangement was entered into, the matter would be submitted to superior authority. Defendant then gave an order upon Messrs. Cursetjee & Co. for the amount due, to be paid from proceeds of certain articles left in their hands for sale. This order was given to the sowcar himself, and not to his agent, and he supposed it to be an order for immediate payment. On presentation, Messrs. C. & Co. declined accepting, on the ground that the articles in question were estimated at prices which precluded the probability of sale, and that if sold by auction, the proceeds would not suffice to cover the amount due. The articles remaining on hand for some months without any offer, a communication was made to the defendant to authorize their sale by auction, or to provide otherwise for payment of the unaccepted order. He declined both propositions. In September 1835, the order was protested by Messrs. C. & Co. Repeated official communications were made to defendant without eliciting any satisfactory reply, and in August 1836 the matter was referred to a court of requests. The other creditors at Kamptee had been arranged with by assignments on the proceeds from sale of house. The plaintiff's claim was omitted in that arrangement, because defendant had promised that he should be settled with before quitting the station. The award of the court in this case was not confirmed by the commanding officer of the force. The foregoing facts having been brought to his notice, the defendant was called upon to enter into an immediate arrangement for liquidation of the amount due, with interest thereupon, or abide the result of a reference to army head-quarters. He acceded to the proposition, entered into an arrangement by monthly instalments, but dying insolvent a few months afterwards, it is presumed the greater part of the debt remains unpaid.

Case 2.—*A. B.* versus *Lieut. C. D.*, for Hyderabad rupees 13. Plaintiff engaged with the defendant for the repair and painting of a bullock coach, for which he was to receive 25 rupees. Two months after the work had been completed, defendant paid him 12 rupees, and having failed in repeated promises, this suit was instituted for recovery of the balance. Defendant declined payment on the plea that one of the springs repaired by plaintiff had broken, and that, pursuant to agreement, plaintiff was to warrant the same for 12 months. In support of this plea defendant handed in an agreement written in the English language, and purporting to bear plaintiff's signature, of which the following is transcript:—

"I promise to repair —— carriage properly, and warrant the springs to keep good for one year, in default of which I will return the money he has given me for repairing the same.

Witness, *Bulling*, as signature.
Pedulnas signature.

Plaintiff admits his mark to the document, but pleads, first, that he merely engaged, in the event of the springs breaking, to repair the same for nothing; and secondly, that the broken spring was not one of those repaired by him. Two servants of defendant, on leading questions being put to them, supported his statement as to the identity of the broken spring. Defendant admits that on two occasions he drove his bullock coach on rough roads, across the country, to some distance from cantonment. The following is the court's award:—

"According to the strict letter of the appended agreement, the plaintiff should lose the whole of the sum he claims, but from certain answers given by plaintiff to questions from the court, it appears that he did not rightly understand its tenor; under this consideration the court awards that eight rupees be deducted from the claim of 13 rupees, and the defendant pay the plaintiff the balance of five rupees."

Case 3.—*A. B.* versus *Lieut. R. S.*, for Hyderabad rupees 45. 2. This action was brought for tailor's work performed by plaintiff and his brother. Defendant being asked if he admitted the claim, replied in the affirmative, to the amount of rupees 31. 10. Plaintiff's brother being called, deposed generally to work performed, but without any special reference to the amount claimed, nor is he questioned thereupon. It is then recorded, that the plaintiff having no further evidence, and the court not being satisfied with that adduced, put the defendant upon his oath. In specifying the items admitted, and those objected to by him, defendant makes out a balance due to plaintiff of 26 rupees and two annas only; alleging at the same time that he considered some of the smaller items of the bill exorbitant, but would leave that point to the court itself. The following is the court's award:—

"That

"That the plaintiff has not substantiated his claim to rupees 45. 2. and therefore award that defendant do pay to plaintiff the sum of rupees 26. 10. which appears to the court to be due; and as the court also consider the plaintiff to have been actuated by fraudulent motives in his proceedings, it decrees the said sum of rupees 26. 10. to be paid in small instalments of five rupees monthly, as a sort of punishment to deter him from future delinquency."

The amount awarded by the court neither accords with the first statement nor subsequent deposition upon oath of the defendant. Its finding of fraud against the plaintiff is not warranted by the recorded evidence, while the discrepance between the defendant's statement in reply, and subsequent deposition upon oath, should have induced caution in admitting his unsupported evidence in his own behalf. It does not appear that the defendant's deposition was explained to the plaintiff, or the opportunity afforded him for reply. In a correspondence with the superintendent of police, before the matter was referred to a court of requests, defendant had objected to the account, on two grounds, that it included bills due to two persons, and that in one of those bills items were erroneously included for articles supplied by himself. Defendant tacitly admitted the sum of rupees 25. 6. as due to plaintiff, and the items objected to in the other bill amounted to rupees 2. 12. only. The bills conjointly amounting to rupees 45. 2. the defendant's admission upon the two bills must be considered good for rupees 42. 6. It was explained that the lesser bill was due to plaintiff's brother, who had transferred the same to plaintiff for recovery, an arrangement not unusual or objectionable. Defendant would appear to have admitted this explanation, since the objection was not renewed before the court. The items objected to were for hooks-and-eyes, and a pair of wings. It was explained that the charge of one rupee was for altering the wings, and not for the materials. And plaintiff positively affirmed that the hooks-and-eyes were purchased by himself in the bazaar.

Case 4.—*C. D. and* 16 *Bearers* versus *Captain A. B.*, for 90 rupees, balance alleged due for one month, and 20 days' pay, at the rate of six rupees each bearer, and seven rupees the head bearer, per mensem. Plaintiff, on behalf of self and bearers, states that 10 days before the march of the regiment from Bangalore, they were entertained by the defendant, Captain ——, at the rate indicated, with the understanding that if they behaved well they would be continued in his service after the arrival of the corps at Secunderabad. Three witnesses, having no apparent interest in the issue, distinctly swear that the rate of hire agreed upon between plaintiffs and an orderly trooper was seven rupees per mensem for the head bearer, and six rupees each per mensem for the remainder. One of those witnesses further deposes to the fact of their having been informed by the trooper that if they behaved well during the march they would be continued in the Captain's service, after their arrival at Secunderabad. Defendant disputes the claim *in toto*, alleging that the bearers were hired for six rupees each bearer by the trip, not by monthly hire, and that they had received their full due. In support of this averment an agreement, written in the English language, and purporting to bear the mark of the head bearer, was produced in court. Defendant admitted that the agreement was entered into some days before the regiment quitted Bangalore, and that the plaintiffs then took up their residence in his compound, but states that this was for their own comfort and convenience, and that when employed by him at Bangalore they were paid extra. An orderly trooper appears as witness for defence, and being asked if he was present when an agreement was made with the plaintiff, replies, "Yes, I was; the agreement was six rupees a head for the trip, not monthly, and a present afterwards, should they conduct themselves well. It was understood that the head bearer would get something more than the rest if he behaved well." Being shown the written document, he recognizes it and says, "this was signed by the plaintiff and the contents well explained to him in the presence, and by order of Captain ——, the other bearers being present." Being asked whether the bearers were in defendant's monthly pay previous to the march of the regiment, replies "No, they were not; Captain —— invited them to put in the compound until the march, there being plenty of shade and water there." There was no further evidence for defence. Plaintiff admits his mark upon the document, but states that he understood the engagement to be for monthly hire, and such was the impression of the other bearers also. Admits also, that on three occasions wherein eight of the number were employed in carrying, money was given them, half a rupee on one occasion, and one rupee on the other two; but they considered this as a present, and when the eight bearers were thus engaged, the remainder were employed about the house. The court awarded 26 rupees, but upon what principle does not appear. The regulated hire per trip from Bangalore to Secunderabad is rupees 8. 12. 6. each bearer. Bearers are in the habit of hiring per trip with individuals proceeding alone from one station to another, full sets being employed, and the march usually performed in less time than prescribed by Regulation. But they are generally averse to trip-hire with regiments, the time occupied being so much greater. The ordinary pay for bearers when marching is seven rupees each per mensem, and one rupee extra to the head bearer. The bearers and other equipments were detained subsequent to the arrival of the regiment at Secunderabad for 18 days before these suits were determined, and the amount of award realized.

Case 5.—*A. B. Butler* versus *Lieutenant A. P.*, for rupees 35. 8. on account of wages and current expenses. Defendant admits to the extent of rupees 11. 2. which was tendered to plaintiff on discharge, but declined by him. Defendant objects to the remainder, because, including interest on monies alleged to have been borrowed from a skroff for current expenses, whereas he has been in the habit of settling accounts daily; he objects also to the difference between butler's and maty's pay for four days, during which the plaintiff was

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was absent on occasion of the Mohurrum, finding a maty only as substitute; and he objects further to two items in the account, which he alleges were paid for some time before. Defendant's cook is called, who deposes to the fact of his master being in the habit of settling his accounts daily: no further evidence for defence. The court awards rupees 11. 2 as. admitted by defendant. The plaintiff, when apprised of this decision, appealed strongly against it, alleging that the cook had sworn falsely, and that his own witness was refused a hearing. On reference to the record of proceedings, the following entry is found:—

Question by the court to the plaintiff. "Did your master authorise you to borrow money on interest, and have you any proof?—*Answer.* Yes, I was authorised, but I have no witness to prove it."

The plaintiff having no evidence to produce in court, the defendant is called upon to state his case.

Yet on subsequent inquiry it appeared that the sowcar was actually called by plaintiff, and questioned (not on oath) as to whether defendant had authorised his advancing money on interest, and on his replying in the negative, his evidence was deemed inadmissible.

Case 6.—At a military court of requests, held at Cannonore, in October 1836, the court, passing by a note of hand for 200 rupees, granted to the plaintiff, a Parsee shopkeeper, by the defendant, a military officer, decreed that a buggy, which, after having been used during the five months had been broken and repaired, should be taken back by the plaintiff in liquidation of his claim, such claim being for the price of the same buggy (together with a harness not mentioned in the decision) originally purchased by the defendants, in adjustment of which the note of hand had been granted.

Case 7.—At Kamptee, in February 1833, a native court of requests gave an award against the defendant, decreeing that the sum sued for should be placed at the disposal of the officer commanding the force, and destroyed the plaintiff's bond.

Case 8.—In February 1838 Subsook sued Gopaul, at Kamptee, for recovery of 101 rupees 6 annas, due on a bond. Gopaul produced two witnesses that he had paid the money, and had met plaintiff's convenience by accepting a promise that the bond should be returned, Subsook asserting that the said bond was with his other papers at Nagpoor. Subsequent applications by Gopaul were met by evasions on the part of Subsook, until the latter preferred a claim for payment of the bond in question, and the claim was referred to a court of requests.

Subsook brought in support of his claim two witnesses, one of whom was rejected by the court of requests. Gopaul produced the two witnesses who saw the money adjusted, and heard the promise given to return the bond, these witnesses having also persuaded Gopaul to accept the promise of its being returned, on the strength of their knowledge of the payment having been made in their presence.

Gopaul offered to prove the perjury of Subsook and his witnesses, but was not allowed to do so by the court, which decided in favour of plaintiff. He, Gopaul, lodged his complaint against his opponents, who were tried by a court martial, and convicted on the clearest evidence of perjury and subornation of perjury.

(signed) *R. Alexander,*
Judge Advocate-general.

Appendix (B.)

Memorandum.

Legis. Cons. 12 August 1839. No. 24. Enclosure.

Previous to the early part of the year 1813, the police authority in the fortress and cantonment of Bangalore was vested in the hands of the native authorities of the Mysore government residing in the Pettah, whose duty it was to take cognizance of all offences committed in the cantonment. The abkary department was also entirely under the control of the same authority. Opportunities were thus afforded to the European soldiery to procure spirituous liquors to excess, whereby the health and discipline of the troops were seriously endangered. To remedy evils of such magnitude it was suggested to his Highness the Rajah, by the Madras government, in the secretary's letter to the British Resident at Mysore, bearing date 1811, that the entire police authority and conduct of the bazaars should be transferred to the commissariat, with a view to the establishment of a military bazaar. In reply, the Resident, in his letter bearing date 7 January 1812, intimates the Rajah's concurrence in the measure of placing the abkary (being the only department in which abuses were found to exist) under the superintendence of the commissariat, but urgently solicits the Madras government not to insist on the measure of taking the whole bazaar from under the authority of his Highness, which point was conceded accordingly; and, in the first instance, the authority of the commissariat officer was confined to the superintendent of the abkary department, on intimating determination of the Madras government to accede to the Rajah's wishes respecting his retaining the bazaars under his own authority.

The following passage occurs in the Chief Secretary's letter to the British Resident, bearing date 31 March 1812:

"The Governor in Council, however, continues anxious that the entire police of the bazaars in the fort and cantonment of Bangalore, but particularly in the latter, may be placed under the

the superintendence of the commissariat, if that arrangement can be effected with the perfect concurrence of the Rajah, and without detriment to the rights and interests of his Highness's government."

In furtherance of this object the Madras government again addressed the British Resident, on the 15th December 1812, urging the necessity of placing the superintendence of the general police of the cantonment and fortress of Bangalore in the commissariat officer, to be exercised under the authority of his Highness the Rajah of Mysore, and requesting him to endeavour to obtain the Rajah's acquiescence in the proposed arrangements:—That the police establishment had continued to be paid by, and remain under the immediate and exclusive authority of the commissariat officer, who is to be considered master of police, and the only authority for the arrangement of the police within the limits of the cantonment and fortress of Bangalore.

In continuation, the Madras government remark, "As it appears that the powers necessary for carrying the desired arrangement into execution cannot be conferred by this government, but must originate from his Highness the Rajah of Mysore, it is the desire of the Honourable the Governor in Council that you will explain to his Highness the nature of that arrangement; and, that in the event of its meeting with his acquiescence, you will apply to him for a written order under his seal and signature, applicable to the successive officers in charge, directing them to distribute justice, and punish all crimes and disorders within the cantonment according to their discretion. This order, when procured, will be transmitted through you to this government, and will constitute the authority on which those officers will act."

The British Resident in his reply, dated 8th February 1813, to the Chief Secretary's letter above quoted, states:

Extract.—"I do myself the pleasure to forward the Rajah's authority under his seal and signature, delegating to the officer in charge of the police department at Bangalore, the right of punishing all disorderly conduct, at his discretion; and I beg you will inform the Honourable the Governor in Council that his Highness will accede to his wish generally, as expressed in your letter, for the better administration of the police department in the cantonment and fort at that station."

The original document thus forwarded was retained in the Chief Secretary's office, and is the authority on which the superintendent of police, up to this period, has acted.

The following is a Copy of a Translation of the Sunnud.

"Regulations by His Highness Kishen Rajah Wadier, for Fort and Cantonment of Bangalore, for the Guidance of Captain Cubbon and his Successors.

"As it would occasion delay in the inquiry and punishment of offences, and in the administration of justice, to transmit daily accounts to the presence and wait for instructions from Mysore, Captain Cubbon is hereby authorized to examine and settle disputes and quarrels, and to punish offences according to their nature, and agreeably to his own judgment.

"Captain Cubbon being placed at the head of the police cutchery at Bangalore, will inquire into and punish all trifling offences committed within the fort and cantonment of —— as above specified; but all great offences, viz. robberies of sums above 500 pagodas, and murders, and suits for sums of the same amount among persons who may be without service or employment of any kind, or amongst merchants, or any sellers of goods, all such offences to be stated to the fouzdar, who will report the same to the presence for further instructions. Should the troops be removed from Bangalore, the police cutchery to be considered unnecessary."

(A true translation.)

(signed) *H. H. Cole*, British Resident.

(True copy.)

(signed) *W. Thackery*,
Chief Secretary to Government.

From the extract of correspondence above referred to, it will be perceived that while the Madras government was anxious to introduce a more efficient police for the purpose of checking as much as possible the use of deleterious spirits amongst the troops, they were most zealous to guard the rights and interests of the Mysore government, and that although the police, together with the control of the bazaars of the fort and cantonment, was placed under the superintendence of a British officer, his authority was derived from the Rajah. The profits on the sale of arrack were forwarded monthly to the fouzdar of Bangalore, which officer likewise continued to realise the bazaar duties as heretofore.

The subjoined extract from cantonment standing orders, by Colonel Marriott, dated 17 March 1817, succinctly but clearly defines the duties of the superintendent of police, and the description of persons amenable to his authority:

Extract.—"The commission under the seal and signature of his Highness the Rajah, bearing date 11th February 1813, grants the fullest powers for the punishment of all offences

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offences except murders and robberies above the sum of (500) five hundred pagodas, and for the final decision of all civil suits under the sum of 500 pagodas.

"Every person committing offences within the above limits* is amenable to seizure, search, summary zeal, and no exemption can be allowed by the offender pleading his being in the public or private service of any European officer, corps, or department."

*The fort and cantonment.

Having thus traced the origin and nature of the authority of the superintendent of police, it may be necessary briefly to explain the mode which has obtained in the administration of justice.

In all complaints for debt, and of a purely civil nature, against any person whatever actually borne on the returns of regiments or departments, and drawing military pay, the complaint is usually, in the first instance, referred to the officer commanding the regiment or head of the department to which the individual belongs, for redress. In the event of this officer being unable satisfactorily to adjust the complaint, it is directed that he shall intimate the same to the superintendent of police, by whom it is then inquired into; and in cases not requiring a reference to the officer commanding the cantonment, a decree is awarded by the superintendent of police, or referred to a punchayet assembled under his authority; in either case, should the defendant object to the sentence, the subject is referred to the cantonment commandant, who then issues the requisite instructions to enforce the decree, or convenes a court martial requests in virtue of the authority vested in him by Act VII. Sec. 12 of the articles of war.

Very few instances, however, are on record in which it has been necessary to assemble a court martial of this nature.

The only difficulty that has ever occurred in adjudicating any civil or criminal matter is in former cases, when the defendant being of the military class abovementioned, and the amount of the suit has exceeded rupees 400, beyond which sum no suit can be determined by the articles of war, or any other Regulation of the British Government that would appear to be considered applicable to the cantonment of Bangalore. However, in a late case, which exceeded the limited sum, it has been determined by the Madras government, that the sentence of a punchayet, assembled by the superintendent of police, in accordance to the spirit and intention of the late Bazaar Regulations of 1821, appearing just and proper, should be enforced, which has been done accordingly, the defendant having readily submitted to the award of the sircar punchayet, so soon as he became aware there existed the authority to enforce it.

Soohje Bhye *versus* Annajee Row, havildar 7th regt. L. C., for rupees, 447. 12.

In all criminal cases preferred at the police office, in which the same description of persons are defendants, evidence of prosecution is recorded by the superintendent of police, and submitted with a statement of the transactions to the officer commanding at Bangalore, who, in the event of its appearing sufficiently conclusive against the accused, resorts to such steps as he may deem expedient to bring the party to justice before a military tribunal.

In all civil and criminal cases all other persons whatever, residing within the cantonment (excepting such as are borne on the strength of regiments, or actually drawing military pay), are amenable to the authority of the superintendent of police, by virtue of his warrant from his Highness the Rajah of Mysore, and subject to summary trial on such warrant.

Doubts have arisen as to whether clauses 41 and 42 of the new Bazaar Regulations of 1832, are applicable to this cantonment.

By section 41, of the new Bazaar Regulations of 1832, at all stations beyond the frontier, and in all detachments in the field beyond the frontier, the officer in charge of the general camp or field detachment bazaar is vested with authority to decide and determine suits, &c. under the amount of 20 rupees, provided the defendant at the time the cause of action arose, and the institution of the suit, belonged to any of the military classes specified in section 13 of the same Regulations, to avoid the necessity of reference inserted in the margin.*

The above section apparently applies only to such stations at which the bazaars are under the authority of the British Government. Bangalore is not, and never has been, a military general camp, or field detachment bazaar, but wholly and entirely a civil bazaar, under the control of the superintendent of police, acting under the authority and in behalf of his Highness the Rajah of Mysore, but deriving no authority in such capacity from the British Government.

It would be most desirable, however, that the commissariat officer at Bangalore, holding the police authority, should be vested with the powers contained in section 41, as far as regards the description of military enumerated in the first clause of section 13; and also all those receiving public pay enumerated in the second clause of the same section; all other persons mentioned in clause 2, are already amenable to the superintendent of police, under his warrant from the Mysore government.

Section

* Sec. 13, clause 1: "All native non-commissioned officers or soldiers whatever; all natives receiving pay or hire in the service of the artillery, engineers, or pioneers; all military surveyors or draughtsmen; all farriers, drummers, or trumpeters; and all apothecaries, assistant apothecaries, dressers, and hospital attendants."

Clause 2: "All natives not specified in clause 1, receiving public pay drawn by officer in charge of a public department appertaining to the army; all artificers and labourers appertaining to the army or military arsenals; all servants of military officers; all public and private servants on the establishment of chaplains at military stations; and all registered military bazaar men."

Section 42, vesting the officer commanding, &c. with certain powers at stations beyond the frontier, if considered merely as regarding individuals borne on the strength of corps and detachments, in receipt of military pay, might be rendered applicable (if not already) to this cantonment, with peculiar advantage, as tending to remove every inconvenience which has ever been experienced in determining civil suits above the sum of rupees 400.

The other classes contained in this section are now amenable to the superintendent of police in all suits under the sum of 500 pagodas, and in excess of that to the Court of Sudder Udawlut.

The experience of many years has proved the system of police now in force to be most efficacious, and it may be questioned whether any other could be introduced more calculated to afford protection and satisfaction to the community, or advantage in every way to the public interest.

(signed) *E. Armstrong*, Capt.
Bangalore, 8 September 1833. D. A. C. G. & Superintendent of Police.

(A true copy.)

(signed) *R. Alexander*, Judge Advocate-general.

From *W. Macleod*, Esq. Superintendent of Police at Bangalore, to the Officer commanding Bangalore, dated the 23d April 1838.

Sir,

In acknowledging the receipt of Captain Baker's letter of the 21st of April 1838, with its enclosure, (letter of date 16 April 1838, from Deputy Adjutant-general of the army, at Fort Saint George) now returned, I have the honour to acquaint you that my authority as superintendent of police being exercised under the warrant of his Highness the Rajah of Mysore, the Regulations quoted respecting punchayets is not in force, although punchayets are occasionally assembled much on the same principle.

Respecting courts of request, I have the the honour to state that the record of these proceedings are not in my office, nor have I anything to do in assembling or conducting such court.

I have, &c.
(signed) *W. Macleod*,
Bangalore Police-office, 23 April 1838. Superintendent of Police.

(True copy.)

(signed) *R. Alexander*, Judge Advocate-general.

From *A. M'Cally*, Esq. Superintendent of Police of Bangalore, to the Officer commanding Cantonment of Bangalore, dated the 10th July 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 23d June 1838, with its enclosures, and to forward herewith my replies to the queries contained in the Adjutant-general's letter of the same date.

I have, &c.

(signed) *A. M'Cally*,
Bangalore Police-office, 10 July 1838. Superintendent of Police.

(True copy.)

(signed) *R. Alexander*, Judge Advocate-general.

Queries.

1. Is there any warrant granted to the superintendent of police at Bangalore, by the Rajah of Mysore, or does the commissariat officer act upon the sunnud forwarded to the Chief Secretary to government, Madras, by the British Resident, on the 8th February 1813? If there be a warrant, it is requested a copy may be furnished.

2. When a person in receipt of pay from the government is tried for debt, and a decision is given against him by the superintendent of police, or by the decision of a

Replies.

1. The authority under the seal and signature of his Highness the Rajah of Mysore, granting to Captain Cubbon, and his successors in office, certain powers in the administration of justice in the cantonment and fortress of Bangalore, is the warrant or sunnud under which the commissariat officer at Bangalore now acts.

The original sunnud was transmitted to the Chief Secretary to Government by the Resident at Mysore, in his letter of the 8th February 1813, and is supposed to be lodged in the Chief Secretary's-office.

2 & 3. The authority is vested in the commissariat officer as above, extends only to persons strictly non-military, the Rajah of Mysore not having delegated any authority

No. III.–Part 1. Military Courts of Request.

Queries.	*Replies.*
punchayet assembled by him under the authority granted by the Rajah of Mysore, what course is adopted to enforce payment of the decree? In the event of there not being sufficient personal property to answer the demand, is real property liable to seizure? And in the event of there not being sufficient of any kind to satisfy the demand, what are the ultimate measures resorted to in the case?	over subjects of the British Government, who were in receipt of pay from that Government; claims therefore for debt, complaints for assaults, and generally all complaints against the military classes, as defined above, were referred by the superintendent of police either to the officer commanding the regiment, or the head of the department to which the party complained of belonged, by whom every endeavour to redress the subject of complaint was made. In the event of failure, the case was retransferred to the superintendent of police, with the reply or explanation of the defendants, and the whole matter was then submitted to the officer commanding the cantonment, with whom it rested to prosecute any further steps. Few instances are known of a process of imprisonment, and none of distraints for fine or debt being issued by the superintendent of police in the case of any of the military classes; that is, persons in the pay of the British Government. Real as well as personal property is considered liable to seizure in enforcing a decree.
3. As by the sunnud abovementioned the commissariat officer has the Rajah's authority to punish certain crimes, not defined, at his discretion, should a fine be imposed on any of the military classes or persons drawing pay from government, and the criminal not have the means of payment, what ulterior measures are, under such circumstances, resorted to?	
4. It is desirable to know what record is kept of proceedings and decisions in civil suits, as also of the nature of the record kept of criminal cases, and what check or control is exercised by the officer commanding in the cantonment?	4. The officer commanding the cantonment is vested with full police authority in the cantonment and fortress of Bangalore, as far as respects all the military classes, and generally can exercise control over all such measures of the existing police system as tend, in his opinion, to affect the well-being of the force under his command; but he exercises no direct interference with the police officer in any of those duties which specially devolve upon him, as the delegate or agent of the Mysore State, by which he is vested with criminal and civil jurisdiction over its own subjects. The record kept of civil cases contains the plaintiff's name, defendant's name, nature and amount of claim; witnesses' names, if any, and decision of the superintendent of police, with dates, &c. The same description of record is kept of criminal suits; in cases of a grave nature, written depositions are taken upon oath, and filed, and if of sufficient magnitude to be out of the jurisdiction of the police court, the case is forwarded to the Commissioner for Mysore. In ordinary cases, both criminal and civil, the proceedings are summary; evidence is heard *vivâ voce*, and not recorded, and only notes taken of it.

(signed) *A. M'Cally*,
Superintendent of Police.

(True copy.)

(signed) *R. Alexander*,
Judge Advocate-general.

Appendix (C.)

General Order by His Excellency the Commander-in-Chief, 10 February 1835.

Legis. Cons. 12 August 1839. No. 25. Enclosure.

The Commander-in-chief is pleased to publish the following Memoranda for the constitution of military courts of request assembled under the provisions of Act 4 Geo. 4, c. 81, and for the guidance and disposal of their proceedings:—

1. In all practicable cases a field officer is to be detailed as president of such courts, and captains and subalterns of not less than eight years' standing, as members.

2. The court having met, the members and president are duly sworn upon each trial separately.

3. The

3. The plaintiff and defendant being both in court, the court requires of the plaintiff (not upon oath) what the nature of his demand is, and on this being stated, interrogates the defendant (not upon oath) as to whether he owns the debt and acquiesces in the statement of the plaintiff or not. This preliminary examination of the parties is to be conducted by the court to such extent as may appear to be desirable; it is to be remembered that such declarations as either party may make against his own interest, although not upon oath, are good evidence against himself.

4. Should the defendant acknowledge the debt, a decree is then passed and recorded accordingly, and the court closes its proceedings on the case.

5. Should the defendant deny the debt, the plaintiff is called upon for his proofs, and his witnesses being produced, are examined on oath by the court, subject to cross-examination by the defendant, and their evidence recorded.

6. The defendant is then in like manner called upon, and the evidence of the witnesses on the defence, subject to cross-examination by the plaintiff, is duly recorded.

7. The court then decides according to the evidence before it, and the decision is entered upon the record, special attention being given in the event of finding any debt or damage due to the provisions of section 57 of 4 Geo. 4, c. 81, and the mode of proceeding therein prescribed.

8. Although neither party can be sworn in support of his own cause at his own desire, yet either party may be required by the other to give answer upon oath, or may be ordered to resort. But it is only usual for the court to resort to such a measure when a decision is about to be pronounced upon the statements of the parties only, without evidence of any kind, or when the evidence adduced is altogether insufficient and unsatisfactory; in such cases the court directs such party as it may deem best. *Sic.*

9. If either party, having been sworn at the request of the other, make such answer as may be prejudicial to the cause of the adverse party, such evidence must, nevertheless, be received and recorded, and due weight given to it accordingly.

10. If a party refuse to be sworn when requested by the other party or ordered by the court, such refusal is to be deemed contumacious and tantamount to a confession against himself, and judgment is to be passed and recorded against him accordingly.

11. One party having been sworn at the request of the other, or by order of the court, the other party is not in any case to be sworn. The plaintiff may, if he pleases, require the defendant to be sworn in support of the prosecution, and this precludes the defendant from making a like demand on the defence.

12. A court of requests cannot in any case decide suits touching land or houses; neither can it on any pretence direct such to be seized or sold in satisfaction of its judgments or decrees.

13. A court of requests is essentially a court of equity and conscience, not bound down by the same strictness of rules and form which attaches to the courts of law generally; and the members thereof are to recollect that they are to make such inquiry as may enable them according to their conscience to do entire justice to both parties. A claim for money due, for instance, might be met by a counter statement of damage done by the adverse party, and the court would then make inquiry, and decide according to the equity of the case. *A.* being servant of *B.*, claims wages due; *B.* admits that the wages are due, but states that certain articles intrusted to the said *A.* his servant, of equal or greater value than the wages due, have been wantonly lost or destroyed by him; the court would thereupon require evidence, first as to the actual intrusting of the articles in question to *A.*, and secondly, as to their value and the circumstances under which they were lost or destroyed, and then pronounce judgment accordingly.

14. No creditor can be allowed to divide his demand against the same person into several suits, for the purpose of reducing it within the jurisdiction of a court of requests; but if he be willing to limit and restrict his entire demand to the sum of 400 rupees, and to quit claim to the surplus of the debt over and above the said sum, then his suit may be admitted accordingly.

15. The statement of the parties, as well as all evidence admitted by military courts of request, are invariably to be entered on the record.

16. The proceedings having been concluded on the particular, are to be sent to the commanding officers, in order to the judgment of the court being duly carried into effect.

17. The proceedings of the military courts of request are to be recorded separately upon each trial, and the record is finally to be deposited in the station or cantonment office.

The above memoranda are also to be considered to be of general application to the proceedings of courts martial held under the provisions of the native articles of war, and Regulation VII. of 1832, in the nature of courts of request, where the defendant may be a native of India. Such courts are, however, invariably to be constituted of native officers, a subadar major, in all practicable cases, being detailed as president, and subadars or jemadars of not less than eight years standing as members, with a superintending officer, and

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and an interpreter attached to the court, and the awards thereof are to be regulated solely by the articles of war and the Regulation quoted.

(True copy.)

(signed) *R. Alexander,*
Judge Advocate-general.

G. O. C. C. 25 July 1835.

With reference to the memoranda published in G. O. C. C. 10th February 1835, it is hereby notified for general information, that in cases where persons having claims are unable to attend in consequence of residing at a distant station, or from any other sufficient cause, courts of request are competent to admit the prosecution of the suit by any person duly authorized to appear on behalf of the plaintiff.

Here follows Regulation VII. 1832, Madras Code.

Appendix (D.)

Act VII. Sec. 12.

"And be it further enacted, that all actions of debt against commissioned officers, non-commissioned officers, soldiers, or other persons amenable to these rules and articles, except such as may be cognizable by the commissariat officer in charge of the police, shall be cognizable before line, garrison, detachment, or regimental courts martial, as the case may be, and not elsewhere, provided the value in question shall not exceed 200 Arcot rupees, and that the defendant was a person of the above description when the case of action arose, and it shall be competent for such courts, upon finding any debt or damage due, to direct the amount of the same, if not paid forthwith, to be levied by seizure and public sale of such of the debtor's goods, saving his regimental appointments and necessaries, as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the court; and if sufficient goods shall not be found to answer the demand, then any money due to him from government, or any sum not exceeding the half of the pay of the debtor, shall be stopped in liquidation of the debt; and if any debtors shall not receive public pay, but shall be a servant or follower, he shall be arrested by the order of the commanding officer, and imprisoned in some convenient place within the military boundaries, for the space of two months, unless the debt be sooner paid."

(True copy.)

(signed) *R. Alexander,*
Judge Advocate-general.

No. III.–Part 2. Military Courts of Request.

Legis. Cons. 12 August 1839. No. 26.

— (A.) No. III.—Part 2. —

MILITARY COURTS OF REQUEST.

Proposed Modification in Regulation VII. of 1832, Madras Code.

Minute by the Honourable *A. Amos*, Esq., dated 19th December 1838.

This subject has been standing over for a considerable time, together with various other military matters, in order that they might be considered in connexion with the subject of courts of request.

I have prepared a draft Act preventive of the stoppage of the pay of sepoys.

It will be necessary, however, to consider the suggestions of the sudder courts, viz. 1. That where the sepoy has no seizable property, there will be no remedy for the creditor; and 2d. That as the law stands, not only cannot more than half the pay be stopped, but that it is within the discretion of the commanding officer to refuse stopping even to the extent of a half, so that the commanding officer may prevent more being seized than will leave sufficient for the soldier's necessary wants.

It will require consideration, whether the principle of the proposed Act should be adopted, or whether the bazaar people should be prohibited from giving credit beyond the amount of a month's pay, by enacting that no debt exceeding in amount a month's pay shall be recoverable in any court of requests. I have prepared an Act to this effect, but I incline to think that its principle is more objectionable than the principle of the other draft proposed; for if we were to enact merely

merely that no sum shall be recoverable beyond a month's pay, the enactment would be avoided by splitting or transferring demands; and if we make the credit given our criterion, the defendant would often be induced to resort to perjury. Besides, such a law would prevent any credit beyond a month's pay, even where the debtor has other funds and effects besides his pay.

(signed) *A. Amos.*

ACT.

Legis. Cons. 12 August 1839. No. 27. Enclosure.

1. It is hereby enacted, that no action of debt against any commissioned officer, non-commissioned officer, or soldier belonging to the native forces of the East India Company shall be cognizable before any court martial or court of requests composed of military officers, or before any commissariat or other officer, in charge of the police at any military station, except such debt shall have been contracted in a regimental bazaar, and in the ordinary business of such bazaar.

2. And it is hereby provided that every action of debt against any such commissioned officer, non-commissioned officer, or soldier, contracted otherwise than as aforesaid, shall be cognizable in like manner, and be subject to the like forms of procedure as actions of debt against any such commissioned officer, non-commissioned officer, or soldier, which before the passing of this Act were cognizable otherwise than as aforesaid.

3. And it is hereby enacted, that no part of the pay of any such commissioned officer, non-commissioned officer, or soldier shall be stopped in liquidation of any debt; but where execution is awarded by any such court or officer of police as aforesaid, if sufficient goods are not to be found by the seizure and sale of which the debt may be levied, the debtor shall be arrested by a written order of the officer convening the court by which execution has been awarded, or of such officer in charge of the police as aforesaid, and imprisoned in some convenient place of confinement within the limits of the station, garrison, cantonment, or military bazaar within which the court or officer of police awarding execution has jurisdiction, for the space of two months, unless the debt be sooner paid; and the goods of the debtor, if found within such station, garrison, cantonment, or military bazaar at any subsequent time shall be liable to be seized and sold in satisfaction of the debt, under such written order as aforesaid.

Minute by the Honourable *A. Amos*, Esq.

Legis. Cons. 12 August 1839. No. 28.

I have proposed a draft Act for the purpose of discussion, pursuant to the views of Colonel Morison and Colonel Stewart, expressed at the last meeting.

I doubt whether all the consequences of the measure have been fully discussed; and I think that the draft may probably require to be modified. For will it not be attended with great inconvenience if soldiers shall be subject to arrest by the civil authorities for trifling debts incurred at sudder bazaars and elsewhere. Military courts were established on purpose to avoid the arresting of soldiers for debts under 200 or 400 rupees. It will be a very important alteration in the present military law to allow of arrests for any debts except those incurred in regimental bazaars.

It will be important to consider the difference in the provisions of the different presidencies in regard to the matters affected by this draft.

By the Madras Code, Regulation V. of 1827, Regulation VII. of 1832, all debts against commissioned officers, non-commissioned officers, soldiers, or certain other persons are cognizable before line, garrison, detachment, or regimental courts martial, or before the commissariat officer in charge of the police (when under 20 rupees) and not elsewhere, provided the defendant was a person of the above description at the time the cause of action arose, and the amount exceeds 400 rupees.

On finding any debt or damage due, the amount is to be levied by distress and sale of goods within the camp, &c., under written order of the commanding officer; if sufficient goods are not found, public money or any sum not exceeding half the amount of pay shall be stopped. If the party does not receive pay, he is to be imprisoned.

No. III.-Part 2. Military Courts of Request.

There are some special rules as to the arrest of persons of the above descriptions in actions left to the civil courts.

By the *Bengal* Code, Regulation XX. of 1810, Regulation XX. of 1825,

Debts and personal actions against officers (perhaps non commissioned officers may be considered as included), soldiers, and persons of a certain (differing from the Regulations of the other presidencies) description, shall be cognizable before a military court, and not elsewhere, provided the value does not exceed 200 rupees, and the defendant was a person of the above description when the cause of action arose.

The court is to consist of from five to three members, and shall be composed of European officers when European officers are the parties concerned, and in all other cases of native officers; the court to be convened monthly by the commanding officers of corps and stations.

Execution may be general, or special out of such part of pay or public money as the court may direct. When execution is general, and no effects can be found, the debtor shall be imprisoned, and his future effects are liable.

By the *Bombay* Code, Regulation XXII. of 1827,

Actions of debt and personal actions, not exceeding 400 Bombay rupees, against officers, non-commissioned officers, soldiers, and certain other persons (differing as before), shall be cognizable before a military court, or superintendent of bazaar (when under 30 Bombay rupees), provided defendant, when the suit was instituted, and the cause of action arose, was a person of the above description.

The court is to be convened by the commanding officer of a station or cantonment. It is to be composed, according to orders of the Commander-in-chief or commanding officer of the forces for the time being, or in the absence of such orders, according to the discretion of the convening officer, either of not less than three European commissioned officers, or of not less than three native commissioned officers, with an European superintendent. Execution may be general or special, as in the Bengal Code.

If there are not sufficient effects under a general execution, public money, or a sum not exceeding half the pay, shall be stopped. If the party does not receive pay, imprisonment.

It will be observed,

1. The proposed draft does not alter the law as to personal actions, not being debts.

2. It takes away the "special" execution of the Bengal and Bombay Codes. This special execution out of the soldier's pay does not appear to be so very objectionable, for it would seem to be discretionary. I doubt whether the Madras sudder judges were correct in observing that the stoppages in default of goods under a general execution were discretionary. These occur in the Madras and Bombay Codes only.

3. The proposed draft does not alter the law as to persons not being officers, non-commissioned officers, or soldiers; these persons are a different class in each presidency.

4. Clause 3 is framed on the model of the Bengal Regulation XX. of 1810, Sec. 22 (omitting the special execution), but with considerable modification on account of the Bengal Regulation not providing for execution where it is awarded by a military officer of police.

There is a vagueness in the Regulations, by which orders of execution, and various matters, are to be done by the commanding officer; to avoid which, I have made the order to be written by the officer convening the court, or the officer of police.

(signed) *A. Amos.*

Legis. Cons. 12 August 1839. No. 29. Enclosure.

ACT.

It is hereby enacted, that no decision in any civil suit passed by any military court of requests, or by any officer in charge of military police, or by any punchayet summoned by such officer, shall be enforced against any commissioned officer, non-commissioned officer, or soldier belonging to the native army of the East India Company, by the stoppage of any part of the pay of such commissioned officer, non-commissioned officer, or soldier.

ACT.

It is hereby enacted, that no civil debt shall be recoverable before any military court of requests, or before any officer in charge of military police, or before any punchayet summoned by such officer, against any commissioned officer, non-commissioned officer, or soldier belonging to the native army of the East India Company, where such debt shall have arisen out of any credit exceeding the amount of one month's pay of the defendant.

Minute by the Honourable Mr. *Amos*, dated the 27th December 1838.

Legis. Cons. 12 August 1839. No. 30.

I have compared the laws and regulations in force respecting military courts of request, and have examined the various papers containing complaints and suggestions upon the subject. We have required and obtained official reports from the presidencies of Madras and Bombay, but we have not written to the Straits; and although incidentally we have got some notices of the decisions of sudder courts on the subject, yet I am not certain that we are in possession of all the decisions of the sudder and supreme courts which it may be necessary to advert to before we publish any Act of Consolidation.

I am prepared, without waiting for further information, to lay before Council for their consideration a draft consolidation Act for military courts of request; but there are so many questions of a military nature which must affect the clauses of the proposed Act, that I submit whether it may not be advisable to postpone the consideration of the Act in Council until the principal military authorities (especially the Judge Advocate) shall be more at leisure to attend to such matters than they can be at present, and perhaps till their arrival at Calcutta.

I send the two first clauses of the proposed Act by way of specimen. Some observations upon these two clauses will perhaps be sufficient to show the difficulties of the subject. I have lettered the provisions of the proposed Act to which my remarks are directed.

(*a*) One question arises whether we may and ought to include the Queen's forces. They are included when serving with the Company's forces by 4 Geo. 4, c. 81. I have not included them.

Another is, whether we may and ought to include the Company's European forces. I have included them. If we do not include them, these inconveniences will arise: first, we must make two Acts with nearly similar provisions, for the Act of 4 Geo. 4, c. 81, can scarcely be left with its present imperfections; secondly, we shall leave all the uncertainty, so much complained of in several of the papers, arising out of the terms in Regulation XX. of 1825, of "British subjects" and "European British subjects."

(*b*) One question arises, whether we have power to make provision for courts of request beyond the frontier. The clause is limited to the frontier.

Supposing that we can make provision for courts of request beyond the frontier, several controverted questions occur as to what distinctions should be made in the jurisdiction, but these would not be detailed in the first clause.

(*c*) Some difference exists as to including "personal actions," and as to the species of personal actions included.

(*d*) The description of persons not being officers, non-commissioned officers, or soldiers, who are to be amenable to military courts, is different in the Act 4 Geo. 4, c. 81, the Bengal, Madras, and Bombay Regulations respectively. Military men must decide on the selection. I am only aware of one point which has been matter of controversy, *i. e.* as to non-military persons who are residents within cantonments, and not serving with the army. This point should be settled.

(*e*) The respective Regulations and Act differ between 200 and 400 rupees. This must be settled of course; the rupees must be all brought from Sicca, Bombay, and Arcot rupees to Company's rupees.

(*f*) The respective Regulations and Act differ between making only those amenable who are so at the time the debt was contracted, and also when the suit was instituted, or only requiring the first condition to be established.

(*g*) The Bengal Regulations provide for the court being convened monthly, and shortly before pay-day. The convening officer is different in different Regulations.

(*h*) The Bombay Regulations leave it discretionary with the Commander-in-chief or convening officer, whether the court shall consist of Europeans or native officers. The term "Europeans," is used in the Bombay Regulations without

No. III.–Part 2. Military Courts of Request.

adverting to the distinction of Europeans by descent only. Some rules as to the selection of European or native officers should be adopted. At Bombay, it would seem, that European officers might sit where the defendant was a native, but under the 4 Geo. 4, c. 81, it is obvious that Europeans must sit in courts under that Act, whether the plaintiff be an European or a native. The Bengal Regulations in effect provide that wherever the defendant is an European officer, European officers shall sit; in other cases native officers sit. The Madras Regulations make no distinction in the constitution of courts of request and other courts martial, thereby leaving the discretion with the convening officer.

As to the numbers of the members, it would, I think, be expedient to adopt the limits of five and three, though this is different in some measure from the Madras rule, which makes no difference between the constitution of courts of request and courts martial.

The principal provisions to be consolidated, are 4 Geo. 4, c. 8, ss. 55, 56, 57. 64. Bombay Regulations XXII. of 1827, XXII. of 1831; Bengal Code XX. of 1810, XX. of 1825; Madras Code V. of 1827, VII. of 1832. Besides which, there are about 40 suggestions contained in the correspondence.

(signed) *A. Amos.*

Legis. Cons. 12 August 1839. No. 31. Enclosure.

ACT.

1. It is hereby enacted that in all places within the territories of the East India Company, where the (*a*) forces of the East India Company are, or may be employed, situate (*b*) beyond the jurisdiction of any court of requests established at the cities of Calcutta, Madras, and Bombay respectively, actions of debt, and all personal actions (*c*) against officers, non-commissioned officers, or soldiers belonging to such forces, and (*d*) against all persons attached to or serving with any corps or detachment of such forces, shall be cognizable before a court of requests composed of military officers, and not elsewhere, provided (*e*) the value in question shall not exceed 400 rupees, and (*f*) that the defendant was a person of the above description when the cause of action arose.

2. And it is hereby enacted, that the commanding officer of any station, cantonment, garrison, corps, or detachment, is hereby authorised to convene such a court of requests (*g*). And the said court shall in all practicable cases consist of five (*h*) commissioned officers, and in no instance of less than three. The officers comprising the court shall be European officers by birth or descent, or native officers, according to the discretion of the officer convening the court. When the court is composed of native officers, an European officer by birth or descent shall be appointed to superintend and record the proceedings.

Note by the Honourable *A. Amos*, Esq. dated the 2d February 1839.

Legis. Cons. 12 August 1839. No. 32.

Act for Military Courts of Request.

This draft is, perhaps, now in a state for being submitted to the military authorities of the different presidencies for their modification. It may be proper to premise, that at present the law respecting courts of request for the Company's European troops, and for the Company's troops at the three presidencies, are all materially different from each other. An attempt was made to consolidate and amend the provisions which concerned the native forces, in a draft submitted to the government by the Commander-in-chief; it constitutes the 84th Article of proposed articles of war, and accompanies this Minute. The principal object of the following observations, is to point out the alterations made in the Regulations of the different presidencies.

Sect. 1. "Actions of debt and all personal actions," Madras Code, Regulation V. of 1827. "Actions of debt," sect. 8, Article 7.

Madras Code, Regulation VII. of 1832, sect. 21, clause 2, contains further explanation of suits not cognizable by military courts.

"Against Native Officers," &c.

Bombay Code, Regulation XXII. of 1827, ch. 2, sect. 7, clause 1, "Persons of the descriptions stated in sect. 3, clause 1, of that Regulation." That clause includes

includes all persons of certain descriptions belonging to the Bombay army, not being British-born subjects. These descriptions do not agree, in terms at least, with those in the articles of war. They include "all persons residing or following any occupation at a cantonment or military station." They do not specify bazaar-men; nor does it appear that the code contains provisions for registering bazaar-men.

Madras Code, Regulation V. of 1827, sect. 10, Art. 7, "Persons amenable to these rules and articles." These persons are to be collected from Art. 10 of the same section. They do not agree in terms with the persons amenable to the articles of war. They do not, as in the Bombay Code, apply generally to persons residing in cantonments, and no mention is made of bazaar-men. In Regulation VII. of 1832, section 13, clause 2, a new list is given, which by sect. 21, clauses 1 & 3, is to determine the jurisdiction of courts of request and of the military police officer; but the like observation applies to the new list as to the old, with some important exceptions. Bazaar-men registered according to sect. 5 of that Regulation are included; also the officers of military servants and of chaplains; and beyond the frontier a more enlarged description, including all persons residing within the camp or cantonment, is adopted.

Bengal Code, Regulation XX. of 1810, sect. 22, "Officers, soldiers, retainers, of description mentioned in Sect. 2 of that Regulation, persons registered as attached to sudder bazaars, bazaars of corps, or menial servants of officers." Sect. 2 does not agree in terms with the articles of war, or with the Bombay or Madras Regulations. By Regulation XX. of 1825, it is declared that Regulation XX. of 1810, does not extend to British subjects attached to the army, within the descriptions specified in sect. 57 of 4 Geo. 4, c. 81; but that it does extend to those descriptions of persons if they be not European British subjects. The effect of this Regulation is somewhat ambiguous, for the list in 4 Geo. 4, c. 81, is, in some respects, more extensive, and in others less so, than that in Regulation XX. of 1810, sect. 2. Regulation XX. of 1810, provides for the registry of bazaar-men for defining the stations and cantonments which shall be deemed to be within the operation of the rules; and that, for some purposes at least, if not for civil suits, the registered bazaar-man must be actually following his occupation.

"Provided the value in question shall not exceed 400 rupees;" 200 rupees is the limit by the Bengal Code; each of the codes specify local rupees.

"Provided the defendant was a person of the description mentioned at the time when the suit was instituted, and when the cause of action arose."

The 4 Geo. 4, c. 81, does not include the provision "when the suit was instituted." It is included in the Bombay Code, but not in the Madras or Bengal Codes.

N. B.—The 4 Geo. 4, c. 81, and the Bombay Code, contain an important provision: That they are not to apply within the limits of the civil courts of request.

General Remarks on Section I.

Although the provisions respecting courts of request are not properly a part of the articles of war, yet our jurisdiction is too doubtful to interfere with 4 Geo. 4, c. 81. Hence arises a difficulty, which has been much complained of, in determining who are subject to the native courts of request. The Bengal Regulation has by no means removed the difficulty by saying, "all but European British subjects." Regulation XX. of 1825, sect. 4, clauses 1 & 4. It may be inquired whether the difficulty is not the same in regard to the native articles of war, and whether the local legislature should attempt to resolve, on the present occasion, this *vexata questio*.

As to the description of persons amenable to courts of request, it is for military men to choose out of six different lists, viz. the codes of the three presidencies, the statute, the articles of war, the present Act, and the Commander-in-chief's draft.

I have some doubts whether this Act should not, in imitation of the Bengal Code, lay down uniform rules for defining stations, bazaars, and cantonments, and for the registry of bazaar-men; otherwise, perhaps the operation of the Act may be different in the different presidencies. This, however, would lead to much detail, and might be found inconvenient in the Bombay and Madras presidencies.

Military men must decide upon the other discrepancies pointed out in the different codes.

Section 2, "Commanding officer of any station or cantonment." Bombay Code, Regulation XXII. of 1827, sect. 7, clause 2, so provides.

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Madras Code, Regulation V. of 1827, sect. 12, Art. 7. The court of requests is to be a "line, garrison, detachment, or regimental court martial," and to be convened accordingly.

Bengal Code, Regulation XX. of 1810, sect. 23. The court of requests is to be convened as courts martial under that Regulation.

"And such courts shall be composed," &c. Bombay Code, Regulation XXII. of 1827, sect. 7, cl. 2, so provides.

Madras Code, Regulation V. of 1827, Art. 11, sect. 8. The numbers differ, and there is no reference to any distinction between Europeans and natives, or any orders from the Commander of the Forces.

Bengal Code XX. of 1810, same observation applied as to Madras Code.

Sect. 3. It will be found that the codes are defective or discrepant as to most of the points in this section. It seems convenient to reduce them all to the standard of the articles of war; but it may require consideration, as offences incident to courts martial are, for the most part, punishable by courts martial, by which tribunal the like offences when incident to courts of request should be punished. There seems to be good reason for the same punishment, though it will probably appear inconvenient either to entrust the power of punishing to the court of requests, or to summon a court martial for the purpose, or to give exclusive power of punishment to a civil court.

It is an important consideration, how far it is advisable to specify the details of procedure more at length in this Act. Nothing is to be found upon this subject in the codes; but various rules of practice are detailed in General Orders for the Madras army, dated 10th February 1835, 25 July 1835. These have been adopted in Bombay, but apparently not in Bengal. It is to be observed that they are drawn up with reference not to the native troops, but to 4 Geo. 4, c. 81. These rules, though no doubt useful in practice, are defective; besides being open to criticism, several of the rules are the subjects of separate subsequent clauses in the present Act. As the practice of courts of request is so much a matter of experience, I think one of the Judge Advocates should draw up a set of rules for the consideration of government, to be inserted by way of appendix to the Act. I have adopted in subsequent clauses several suggestions of the Judge Advocate of Madras upon this subject; but have omitted the following, as entertaining some doubts regarding their necessity, or expediency of them. They are, however, deserving of consideration, viz.

1. Touching non-appearance of plaintiff or defendant.
2. Interrogatories for distant witnesses.
3. Interval for summoning of witnesses.
4. Rule as to swearing of parties.
5. More distinct modes for executing decrees.
6. New provisions for stoppages, where a regiment passes into another range of payment.
7. Agreements for more than 12 per cent. interest.
8. Crying down credit in sudder bazaars.
9. Contracts to be written in languages of both contracting parties.

Sect. 4. The first provision of this section is peculiar to the Bengal Code, Regulation XX. of 1810, sect. 22. The second provision is new, and is meant to be auxiliary to the new power of revision subsequently provided for.

Sect. 5, 6, 7. This mode of trial by a single officer is peculiar to the Madras and Bombay Codes; it does not enter into the Bengal system, and was excluded from all the presidencies by the proposed 84th Article of War.

In consequence of the suggestions of the Madras Judge Advocate, the jurisdiction is limited to the senior commissariat officer. The clauses in the Bombay Regulations respecting the "Superintendent of Bazaars," are Regulation XXII. of 1827, sect. 32, clauses 1, 2, 3; the limit in amount is 30 rupees. The Madras rules respecting the "Officer in immediate charge of the Police," are contained in Regulation VII. of 1832, sect. 21, clauses 3, 4; the limit in amount is 20 rupees.

The section in the text is taken partly from the Madras and partly from the Bombay Regulations, modified by the suggestions of the Madras Judge Advocate.

Sect. 8. The objects of this section were imperfectly provided for in the Madras and Bombay Codes, but the like observations occur as were made upon sect. 3.

Sect. 9, 10. These sections are pursuant to suggestions by the Madras Judge Advocate

Advocate. They contain an important alteration in the law with regard to the revision of decrees.

Sect. 11, 12, 13. These sections relate to the very important subject of the execution of decrees passed by military courts of request and by the commissariat offices. Some of the details have been taken from one code and some from another, but the substance of the provisions is taken from the Bengal Code, the principle of which code is opposed to the Bombay and Madras Code, and does not allow of any stoppages in default of a general execution.

All the Madras military authorities represent in the strongest possible manner the mischiefs arising to the discipline of the Madras army from the credit given at sudder bazaars, and the consequent stoppages of pay. It has been proposed to limit the amount of credit in those bazaars, a subject upon which I have written in reference to a draft of an Act now in the Military Department, framed for this purpose; but there are considerable difficulties in the way of any measure for accomplishing this object. Whether the adoption of the Bengal rule as to general executions will at all diminish the evil, may deserve consideration.

Sect. 14, 15, 16, 17. These sections are pursuant to suggestions of the Madras Judge Advocate.

Sect. 18. There may be some doubt whether the Council has authority to pass this section,—a matter which may be subsequently inquired into. The terms of the provision are taken from the proposed 84th Article of War. The Law Commissioners thought that even beyond the frontier a limit in amount should be assigned. The terms of the section do not agree with those in any of the codes. I have added a provision respecting trials beyond the frontier by the commissariat officer, pursuant to Sect. 41, Regulation VII. of 1832, of the Madras Code. In the draft article of war it was obscure whether the cause of action must have arisen beyond the frontier. Attention is requested to the Madras papers respecting suits for real property in cantonments beyond the frontier.

Sect. 19. The mode of trying military suits by a punchayet is the subject of numerous clauses in Regulation VII. of 1832, of the Madras Code, and it is peculiar to that code. These clauses have received constructions from the Sudder Civil Court of Madras, and various amendments of them are suggested; they constitute a small code of themselves. I have delayed the revision of the law of punchayets in military causes until it shall be determined whether the species of trial is to be introduced into the Bengal and Bombay armies.

Omissions.

The draft Act now submitted is principally taken from materials in the codes of the three presidencies, lying dispersedly and in connexion with other matters; viz. general military regulations, articles of war, and the police of bazaars. In abstracting the matter immediately connected with the present subject of the present Act, which I apprehend is exclusively that of the "Recovery of debts, and compensation for personal damage," I possibly may have rejected some provisions which it may be thought might be advantageously inserted. I proceed to notice those upon which I have had some doubts respecting their expediency or applicability, and which I have omitted, subject to further discussion.

Bombay Code, XXII. of 1827. The whole of chap. 5, concerning "Process by civil authority, how to be conducted within the limits of cantonments."

Ibid. Sect. 32, clause 3, explanatory of the jurisdiction of the superintendent of bazaars.

Madras Code, VII. of 1832, sect. 21, clause 2, explanatory of the nature of suits to be tried by courts of request.

Ibid. Sect. 22, clauses 1, 2, 3, 4, as to terms of suit in civil courts against military persons.

Ibid. Sect. 23, Certificate of belonging to military classes.

Ibid. Sect. 21, Stamp duties.

Ibid. Sect. 22, Interest of money.

Ibid. Sect. 34, Forwarding military persons to the civil power.

Ibid. Sect. 38, Extension to other than military bazaar stations.

Ibid. Sect. 39, Civil arrests within military stations, clauses 1, 2.

Bengal Code, XX. of 1810, sect. 19, Execution of process of arrest within military stations.

Ibid. Sect. 20, Execution of arrest against bazaar-men, laying down and confirming of limits of bazaars and cantonments.

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Bengal Code, XX. of 1810, sect. 24, respecting process of arrest from civil courts against military persons.

Ibid. Sect. 25, Process of arrest from civil courts against bazaar-men.

Ibid. Sect. 26, Proviso against dispossession of lands and houses.

As to the registry of bazaar-men, and the defining of stations and cantonments, *vide* general observations on sect. 1 of the text.

Bengal Code, XX. of 1825, sect. 4, clauses 1, 2, 3, 4, exempting from the Act European British subjects, or British subjects.

It only remains to add several suggestions which are to be collected from the papers, which may be very deserving of consideration in the forming of a military code, but which are not immediately connected with the recovery of debts, and compensation for personal damage, which, I apprehend, is the proper subject of the present draft Act:—

1. Better definition of police powers in military bazaars.
2. Giving to superintendent of police the powers of coroner.

And generally attention is requested to the various points noted and commented on by the Law Commissioners, in their communication to Council, dated 15th June 1838, and in the Report of the Judge Advocate of Madras, communicated by the Madras government, in a letter dated 11th September 1838, which two documents apparently contain or notice all the suggested amendments which have been recommended. It will be seen that many of these relate to punchayets; a subject which, for the reasons before mentioned, has been postponed.

(signed) *A. Amos.*

From General *Casement* to the Honourable *A. Amos*, Esq., dated the 20th April 1839.

Legis. Cons.
12 August 1839.
No. 33.

My dear Mr. Amos.

I HAVE perused with attention the drafts of the enactments for courts of request in the native armies of the three presidencies, and your Minutes upon their various clauses. I have also gone through such of the papers accompanying as appeared to require immediate consideration.

I would beg to observe that, in my opinion, the course now most advisable, as likely to produce the desired information or suggestions calculated to render the enactment as complete as possible, in the mode most to be depended upon, and in the shortest period of time, is, to transmit to the military authorities of the different presidencies copies of the two draft Acts, accompanied in each case by copies of such of the papers as have come up from the other presidencies, and to forward them with a letter embodying all the remarks and points contained in your Minutes on both the draft Acts. It appears to me also that the provisions of the two Acts might very conveniently be combined in one enactment.

It is, I think desirable that each of the Judge Advocates General should be requested to prepare an appendix of rules of detail, for the guidance of courts of request and commissariat officers. The valuable suggestions which might be expected to result from this requisition, would probably admit of easy combination and arrangement, applicable to all the presidencies.

I proceed to submit such few remarks as have occurred to me on consideration of the draft Acts.

Draft Act for Military Courts of Request, &c. &c.

Clause 3. I doubt the expediency of investing the courts of request, &c. with the powers of punishment here given. For non-attendance, or reluctance of witnesses, and for perjury, it appears to me incompatible with the nature and duties of courts of request that such courts should possess the power to punish. Regarding the first of these offences, non-attendance, it would in general be out of the power of such a court to exercise such jurisdiction; and the articles of war might be made to provide for this contumacy in general, when committed in the case of courts of request, as in the case of courts martial.

Regarding the second branch of offence, reluctance to give evidence, the same provision might be made in the articles of war; and for the punishment of perjury, the articles of war do already provide, as committed before any court entitled to administer on oath, which included courts of request. The provision, however, should

should be made to embrace perjury committed before the commissariat officer also, who is entitled by this draft Act to try small suits.

The essential attribute of a court of requests seems to me to be this, that its consideration and its decision shall exclusively relate to the actions of debt, and personal actions, for the cognizance of which it is established. But if such a court is authorized to enter into considerations of contumacy of witnesses or perjury, in the light of offences criminally punishable by itself, a door is opened to much extraneous proceeding, and a handle given to insinuations of doubt as to the impartiality of decrees made by the court. In the case of all military courts, I should incline strongly to discourage the practice of punishing witnesses, or proceeding any further with them than to commit them for trial and sentence by another court martial. It is well that they should be empowered by the articles of war, as they are, to punish witnesses for contumacy or perjury, because it may happen to be desirable so to do; but in by far the greater number of cases, no such summary procedure is necessary, and it appears to me that the dignity of a court martial, especially as regards the ostensible purity and impartiality of its verdict, is likely to be sustained by transferring the cognizance of these offences to a new court. To a court of requests the sentiment I have endeavoured to express would seem to apply with much greater force.

For mere contempts, however, which though they disturb, do not relate to the suit before the court, I see no objection to giving jurisdiction to a court of requests for such offences committed in court.

Clause 5. Is it intended here that the commissariat officer shall administer an oath to witnesses in suits tried before him? If so, which appears to me desirable, a provision to that effect would seem necessary.

Is it intended that the commissariat officer shall take the prescribed oath every month, or on every occasion of trying suits, or when he assumes office? The latter is, in my opinion, the best time to take the oath once for all, whenever a commissariat officer shall become senior at a station for the purposes of the Act.

Clause 8. This invests the commissariat officer with the same powers as are previously conferred on courts of request; and for the same reasons the objections I have already stated would appear to apply to this clause.

Clause 9. In a preceding clause (7), the commissariat officer is directed to furnish a monthly return of his proceedings and decisions; but if the latter are liable to revision, that should take place as soon as possible after they are made. To wait for a month would often defeat the object, or render impossible the effecting of a revision. It would be an improvement, and not attended with any inconvenience, that returns should be made of decisions without delay, in the same manner as courts of request are by this Act required to furnish a copy of their proceedings.

Clause 10. This appears to give an unlimited power of ordering revision. I think it would be well to restrict the commanding officer to one revision, and to empower him, in case the court or the commissariat officer adhere to their unsatisfactory decree, to send the suit up to a new court of requests (the next month, for instance), the decree of which new court to be final, unless palpably illegal.

Clause 11. The direction to record proceedings (which I presume means that the evidence as well as the suit and decree shall be recorded at length, otherwise the commanding officer will be in the dark as to the merits of the case), is a great improvement on the present practice, and the power of directing revision conferred by this clause, appears to me a very necessary provision.

Clause 12. The seizure and sale authorised by this clause, should I think be distinctly and expressly placed within the competency of the commanding officer of the station. It is implied perhaps by the clause as it stands, but to state it in words would be an improvement.

With regard to the imprisonment of arrested debtors here contemplated, there are no suitable places in the military stations in this presidency. I would suggest therefore that the words "situate within the limits of the station or cantonment," be taken out, and that it be permitted to send such debtors to the civil gaols in the respective neighbourhoods.

Clause 13. It does not appear by whose order the stoppages are to be made. The paymaster will require authority to make them. Perhaps the commanding officer's certificate of the decree, and of his own decision that it should be met by stoppages, would suffice, and be the readiest mode of authorising stoppages by the paymaster.

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Clause 17. The same remark applies to the seizure here contemplated. The commanding officer should be distinctly authorized.

These remarks are all that it occurs to me to submit on this occasion. I have abstained from going into the more important parts of the subject, because it appears to me the particular province of the Judge Advocates General (under the orders of the several Commanders-in-chief) to enter into these parts of the contemplated Acts; and upon the suggestions and information which the reference I have proposed will elicit, I hope to have a subsequent opportunity of stating more at large what considerations may suggest themselves to me, and I should then be able to do so in a manner more likely both to satisfy myself, and to conduce towards the efficiency of the Act, than if I were now to enter upon them.

I beg to return the box, with all the papers you sent me.

Yours, &c.
(signed) *William Casement.*

Legis. Cons. 12 August 1839. No. 34.

From General *Casement* to the Honourable *A. Amos*, Esq., dated the 23d April 1839.

My dear Mr. Amos,

The clauses of the draft Act for courts of request appear to me now well calculated for the purpose, but I think two little alterations would improve the 3d and the 8th clauses.

To the former, I would propose to add a few words (in order to give a concurrent jurisdiction to courts of request and courts martial over contempts or disturbances committed in presence of the former), in words to the following purport: "and that as regards the other offences herein above stated, the offender shall be punished as aforesaid, either by the summary judgment of the court, or by the sentence of a general or other court martial."

My object in this suggestion is, to avoid the possibility of a commissioned officer being punished by a court of requests.

In clause 8, I would propose to insert after court, the words "of such commissariat officer;" and the clause might, I think, more briefly conclude thus, "shall be the same as are hereinbefore provided for the observance of military courts under this Act."

If this suggestion be not adopted, it will be desirable to add to the proviso in this clause a few words relating to contempts of courts, similar to those before suggested in the case of courts of request.

With regard to the draft of proposed terms of reference to the military authorities, they appear to me very completely adopted to elicit the desired information.

Perhaps it might be advisable not to say (as in the closing part of clause 5) that offences by witnesses are of a nature more fit for the investigation of a civil than of a military court. The articles of war make such offences by amenable witnesses punishable by courts martial, excepting only such persons at all as are not amenable; and it is quite customary in the army to try men for non-attendance, perjury, &c. as well-understood military offences.

In clause 6, I would propose to insert (as a subject among those enumerated as requiring consideration) the suing by representative in such instances as tradesmen of Calcutta suing debtors at the mofussil stations. This is a branch of the subject on which much contrariety of practice has obtained.

I am, &c.
(signed) *William Casement.*

Legis. Cons. 12 August 1839. No. 35.

Note by the Honourable *A. Amos*, Esq., dated the 8th of May 1839.

In consequence of the opinions expressed in Council with reference to suits in military courts of request beyond the frontier, suggested by a case at Baroda, in which a person, not an officer or soldier, but apparently residing within a cantonment, was cast for a debt amounting to 44,500 rupees, I have added to the draft Act a proviso for giving a right of appeal in suits beyond the frontier, where the amount recovered exceeds 400 rupees.

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In the terms of reference, I have added a paragraph (para. 10), requesting the opinions of the military authorities upon this subject, especially with regard to any provisions with which it may be thought that the power of appeal should be accompanied.

The principle of an appeal to a civil court being entirely new, it must be expected that the details incident to the appeal cannot be disposed of in the short way proposed in the draft; they are not likely, however, to occasion any difficulties of consequence.

The Law Commissioners recommend that beyond the frontier, the jurisdiction should be limited in amount. The Regulations of the different presidencies are not more uniform upon this point than upon almost every other point touching military courts. The liability in consequence of residence within a cantonment is a *vexata questio*. The Baroda case also presents various other points of questionable jurisdiction.

(signed) *A. Amos.*

Draft of Act.

Legis. Cons. 12 August 1839. No. 36. Legislative Dept.

Fort William, 20 May 1839.

1. It is hereby enacted, that within the territories of the East India Company, actions of debt and all personal actions against native officers, non-commissioned officers, soldiers, and other persons amenable to the articles of war for the native forces in the military service of the East India Company; persons registered as attached to sudder bazaars or bazaars of corps, and following at the time their occupations in respect of which they are so registered, or menial servants of officers belonging to such forces, shall be cognizable before a military court, and not elsewhere, except as hereinafter mentioned; provided the value in question shall not exceed 400 rupees, and the defendant was a person of the description above mentioned when the cause of action arose, and when the suit was instituted.

2. And it is hereby enacted, that the commanding officer of any station or cantonment is authorized to convene such military courts. And such courts shall be composed, according to the order of the Commander-in-chief or commanding officer of the forces of the presidency within which the station or cantonment is situate, or in the absence of such orders, according to the discretion of the convening officer, either of not less than three European commissioned officers, or of not less than three native commissioned officers, with an European officer to superintend and record the proceedings.

3. And it is hereby enacted, that the procedure in such military courts, including the appointment of an interpreter, the oaths to be taken by the members of the court, by the superintending officer, and by the interpreter, and the rules and provisions as to the hours for the sitting of the court, for the summoning and examination of witnesses, for the manner of voting, for punishing non-attendance, refusing to give evidence, or perjury as a witness, or using menacing words, signs, or gestures in the presence of the court, or causing any disorder or riot so as to disturb its proceedings, shall be the same as prescribed by the articles of war in the case of courts martial; provided that as regards the offences of non-attendance, refusal to give evidence, and perjury as a witness, the offenders, if amenable to the articles of war, shall be tried and punished by a general or other court martial, subject to all the rules contained in the articles of war for the administration of justice by courts martial, and that in regard to the other offences hereinbefore in this section mentioned, the offender shall be punished as aforesaid, either by the summary judgment of the court, or by the sentence of a general or other court martial.

4. And it is hereby enacted, that such military courts shall be convened monthly, and shall be holden on some convenient day before the issue of the pay for each month; and that after the conclusion of each case, a copy of the proceedings, including the evidence and decree therein, shall be furnished to the officer commanding the station or cantonment, by the president of every such court.

5. And it is hereby enacted, that at all stations where military bazaars are established, suits for the recovery of any debt not exceeding 20 rupees, in which the defendant at the time the cause of action arose, as well as at the period of the institution of the suit, was a person belonging to any of the descriptions before mentioned, shall be brought before the officer commanding at such station, who may, by written order, refer them to the senior commissariat officer at such station, who

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who is hereby invested with authority to determine all such suits; or may at his discretion direct them to be tried by a court of requests.

6. The senior commissariat officer as aforesaid, on his becoming such officer, and previously to acting under any such reference as aforesaid, shall take and subscribe the following oath before such commanding officer as aforesaid, who is hereby authorized to administer the same:—

Oath.

I, *A. B.* solemnly swear that I will try and determine all suits referred to me under Act of 1839, to the best of my ability and judgment, without partiality, favour, or affection, and that I will not directly or indirectly receive or knowingly allow any other person to receive for me any money or effects of any kind on account of any suit that may come before me for decision, or shall have been decided by me. I will strictly adhere to all the rules prescribed for my guidance, and I will, in all respects, truly and faithfully execute the trust reposed in me.

7. And it is hereby enacted, that the senior commissariat officer as aforesaid, in trying suits falling under his cognizance, shall have power to administer oaths or solemn affirmations to the witnesses, and shall record his proceedings and his decree in writing in the English language; and after the conclusion of each case a copy of the proceedings and decree therein shall be furnished by such commissariat officer to the officer commanding the station or cantonment.

8. And it is hereby enacted, that the rules and provisions as to the hours for the sitting of the court for the summoning and examination of witnesses, for punishing non-attendance, refusing to give evidence, or perjury of a witness, or for using menacing words, signs, or gestures in the presence of the court or such commissariat officer, or causing any disorder or riot so as to disturb its proceedings, shall be the same as prescribed by the articles of war in the case of courts martial; provided that as regards the trial and punishment of the offences in this section mentioned, the same rules shall be observed as are hereinbefore prescribed in section 3 of this Act.

9. And it is hereby enacted, that the officer commanding at any station or cantonment, upon being furnished with copies of the proceedings, including the evidence and decree, of any military court of such senior commissariat officer, shall pass his orders thereon, either for a revision of the decree or for the execution thereof.

10. And it is hereby enacted, that the officer commanding as aforesaid, to whom such copy of any decree shall have been furnished as aforesaid, is authorised to remit the same for revision if he shall be dissatisfied with such decree, either upon any matter of form or upon the merits, to the authority passing such decree, or to any military court constituted as aforesaid; and he shall have the like power in respect of any subsequent decree in the same matter.

11. And it is hereby enacted, that if the commanding officer shall be satisfied with any such decree, he shall countersign the copy thereof furnished to him, and shall direct whether the execution shall be general or shall be satisfied out of the pay of the debtor and of public money that may be due to him; such direction shall be in writing, and signed by the commanding officer.

12. And it is hereby enacted, that where the execution is directed to be general, the debt, if not paid forthwith, shall, under the authority of the commanding officer in writing, signed by him, be levied by seizure and public sale of such of the debtor's property as may be found within the limits of the station or cantonment; and if sufficient goods are not found within the limits of the station or cantonment, the debtor shall be arrested and imprisoned in any civil gaol near to the station or cantonment, or in any other convenient place of confinement (such place to be designated in the directions of the commanding officer) situate within the limits of the station or cantonment, for the space of two months, unless the debt be sooner paid; and his goods, if found within the limits at any subsequent time, shall be liable to be seized and sold in satisfaction of the debt.

13. And it is hereby enacted, that if the commanding officer shall direct the execution to be satisfied out of the pay of the debtor, the whole or any part of such pay or public money, or both, according to the terms of such direction, which may be coming to the debtor, either in the current or any future month, shall be stopped and paid over to the creditor; and a certificate of the decree and direc-

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tion thereon, under the hand of the commanding officer, and signed by him, shall be a sufficient authority for making such stoppages.

14. And it is hereby enacted, that where suits may be brought in a military court of requests upon several notes, bonds, or other securities, or upon several demands of a different nature, such suits shall be cognisable by such military court, provided the amount claimed in respect of each security, or in respect of each demand shall not exceed the sum of 400 rupees.

15. And it is hereby enacted, that no suit shall be brought in any military court, or any commissariat officer, for any demand where the cause of action shall not have arisen within six years from the time of instituting the suit.

16. And it is hereby enacted, that upon any suit being brought before any military court or any commissariat officer, it shall be lawful for such court or officer, and he is hereby required to investigate any counter-claim or set-off which the defendant may allege that he is entitled to against the plaintiff, and to allow the plaintiff only what may be due to him after such deductions.

17. And it is hereby enacted, that in case of any general execution against a defendant, it shall be lawful, on failure of payment, under the authority of the commanding officer, in writing signed by him, to seize any goods which he may hold in his possession by way of pawn or mortgage, and the same shall be delivered to the plaintiff, subject to all such rights as the owners thereof had against the defendant at the time of the seizure of the same.

18. And it is hereby enacted, that such actions of debt and personal actions as aforesaid arising beyond the frontier, may be brought before such military courts as aforesaid at any station or cantonment beyond the frontier of the territories of the East India Company, for any amount of demand; provided that such military courts beyond the frontier shall be composed of European officers, and that in case of any claim not being satisfied, imprisonment shall not be awarded for a longer term than six months, or in case the debtor shall be proved to have been guilty of fraudulent or dishonest conduct, for a longer term than two years: provided also, where the sum received shall exceed 400 rupees, an appeal shall lie to the Court of Sudder Dewannee Adawlut of the nearest presidency, according to the same rules as are in force with regard to appeals to that court from subordinate civil courts; where the amount in dispute does not exceed 30 rupees, the cause may be tried and determined beyond the frontier, by such commissariat officer as aforesaid, in like manner as suits within the frontier are tried and determined by such officer.

19. Provided that nothing in this Act contained shall be construed to repeal or affect any Regulation or part of Regulation touching the trial of suits at military bazaar stations by punchayet.

Draft of Instructions to the Three Presidencies, dated the 22d April 1839.

Legis. Cons. 12 August 1839. No. 37.

1. The military authorities of the different presidencies are requested to consider the draft Act herewith sent, together with the accompanying papers containing suggestions for the improvement of courts of request for the recovery of debts against military persons, and of the administration of justice by commissariat officers, with a view to forming a general and amended system of law upon this subject, applicable to all the presidencies. Their attention is also particularly requested to the statute 4 Geo. 4, c. 81, and to the Regulations of the several presidencies, sent herewith.

2. It will be observed that in the Regulations of the several presidencies there is a want of uniformity upon the following points; viz.—1. The species of action which may be tried before the military tribunals in question; 2. The amount recoverable; 3. The descriptions of persons against whom suits may be brought; 4. The point whether the defendant must have been a military man at the time when the cause of action arose, as well as when the suit was brought; 5. The jurisdiction of military courts of request within the limits of the courts of request established in the presidency towns; 6. The persons convening courts of request; 7. The persons composing the courts; 8. The forms of procedure; 9. The execution of decrees; 10. Rules to be pursued beyond the frontier. And it will be noticed that discrepancies upon most of the above matters occur both in respect of military courts of request, and also of the administration of justice in civil suits by commissariat officers. The military authorities are requested to

No. III.–Part 2.
Military Courts of Request.

give their opinion upon each of the above matters, and to state, in respect of each of them, their reasons for preferring, in a general system, the rule of one presidency in preference to that of another, or their reasons for considering that a general rule in regard to any particular matters could not be conveniently adopted for all the presidencies; and also to offer such observations as they may think proper concerning the amendments of the existing Regulations proposed in the draft and the various papers, or which may occur to themselves.

3. Particular attention is requested as to the point whether the punchayet system of Madras should be extended to the other presidencies, and whether the provisions in the draft respecting the administration of justice in civil suits by commissariat officers, and which are taken from the Madras and Bombay Regulations, can be conveniently extended to Bengal.

Attention is requested to a matter which is much urged in the papers from Madras, respecting the limiting of credit to be given in military bazaars. Difficulties appear to occur in limiting the amount recoverable in the military courts, without at the same time admitting the great inconvenience of any credit in excess being recoverable in the civil courts; the principle hitherto adopted having been, that parties were precluded from suing military men in the civil courts only in cases in which a prompt remedy was open to them in the military courts. In making any provisions for limiting credit given by a particular individual to a military man, it must be obvious that it will be difficult to prevent an extended credit being fraudulently given, in a manner so as to make it appear that the extended credit has been given by a different individual; should the military authorities be of opinion that credit in bazaars ought to be, and can be conveniently restricted, it will be advisable that they should point out the most effectual and least objectionable way of accomplishing this object.

4. In adverting to the new provisions of the draft, it will be important to ascertain the opinion of the military authorities as to the propriety of allowing the commanding officer, in addition to his power of refusing to execute a decree, the power of sending it back to the same or another tribunal, once, oftener, or an unlimited number of times.

5. In regard to the punishment of persons amenable to the articles of war, for not attending as witnesses, refusing to give evidence, or committing perjury, it will be important to ascertain the most convenient mode of punishing such offences. On the one hand there is a great convenience in the delinquency being punished promptly by the tribunal before which it arises; but on the other, neither courts of request nor the commissariat officer appears to be so competent to deal with offences of such a nature as courts martial generally are. It may, perhaps, be thought by some that courts martial even are not a very fit tribunal for such purposes, and that if the courts of request and the commissariat officer are not to have jurisdiction, on the ground that the offences are incident to their proceedings, it may be the best course to transfer the offenders to the civil tribunals. The nature of the offences is not better suited for investigation by a military than by a civil court, but the distance of the proper civil court may prove an inconvenience to the military service.

6. Besides the rules of procedure before military courts which have been laid down in the Regulations, there are various details of a minuter description, which are noticed in General Orders, or suggested in the various papers sent herewith, such as regard attendance of parties by representatives, interrogatories to distant witnesses, the swearing of the parties, the non-appearance of the parties, the interval of time allowed for the summoning of witnesses, and the like. It would be very desirable to embody, in one uniform system, the most expedient provisions of this nature that may be suggested by the military authorities of the several presidencies.

7. The like observations, as in the last paragraph, are applicable to various rules of evidence or practice; in regard, for example, to the proof of contracts, as requiring them to be in writing, and in the languages of both the contracting parties, or the practice of the court in allowing a particular rate of interest.

8. It will be observed that the provisions in the Regulations concerning the recovery of debts before commissariat officers, are to be found in connexion with a multitude of miscellaneous provisions concerning military bazaars and cantonments. It may be a question for consideration, how far the proposed Act should incorporate any of the provisions respecting bazaars and cantonments, which are so far applicable to the subject of the Act, as they designate the limits of its operation

operation as to persons and places, or explain the capacity and jurisdiction of the commissariat officer.

9. It will deserve consideration, whether, in the proposed Act, the subject of the protection of military persons from suits in the civil courts, should be particularly entered into, and if this be thought advisable, whether the existing provisions upon the subject have, in practice, been found adequate.

10. On the subject of the recovery of debts beyond the frontier, particular attention is requested to the existing Regulations, and to the power of appeal which is proposed to be given in certain cases, both as regards the conferring of such a power, and the limitations and provisions by which it ought to be accompanied, and the tribunal to which the appeal ought to lie.

11. On the subject of punchayets, if it shall be thought advisable to include them in the present Act, it would be advisable that draft clauses should be furnished, incorporating the provisions in the Regulations, the principal decisions of the Madras Sudder Court, and the various amendments suggested, by means of which the law may be expressed in a compendious and improved form.

(signed) *A. Amos.*

(No. 320.)

Legis. Cons. 12 August 1839. No. 38.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India with the Governor-general.

Sir,

I AM directed by the Honourable the President in Council to forward to you, for submission to the Right Honourable the Governor-general, the accompanying original papers as noted in the margin*, on the subject of a proposed enactment for the better administration of justice in military courts of request in all three presidencies.

2. It will be observed that the question was originally brought to the notice of the government of India by the government of Fort St. George, in their Chief Secretary's despatch, dated 1st December 1835, and proposed for the consideration of the Indian Law Commission. Enclosed with this letter, amongst other papers, is a letter from the register of the Madras Foujdaree Adawlut, dated the 20th of November 1835, in which will be found a statement of the circumstances which had suggested to the Madras authorities the propriety of various modifications of Regulation VII. of 1832 of the Madras Code, and an explanation of the modifications proposed.

3. On the 22d November 1836, the Madras government submitted also, for reference to the Law Commission, extracts from a resolution recorded by the government on the 13th August 1833 on a previous communication from the Court of Foujdarry Adawlut. On that occasion the local government expressed an opinion that a summary appeal to the zillah judge should be allowed, in the event of the military court or punchayet exceeding their jurisdiction. The Honourable

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* Letter from the Chief Secretary to the Government of Fort St. George, dated 1st December 1835, with one Enclosure.
Letter from the Chief Secretary to the Government of Fort St. George, dated 22d November 1836, with one Enclosure.
Extract Political Department, dated 30th January 1837.
Letter to the Secretary to the Indian Law Commission, dated 8th May 1837.
Extract Military Department, dated 16th October 1837, with one Enclosure.
Extract Military Department, dated 20th October 1837.
Resolution of the government of India in the Legislative Department, dated 6th November 1837.
Letter from the Secretary to the Indian Law Commission, dated 15th June 1838.
Letter from the Officiating Secretary to the Governor-general North West Provinces, dated 13th October 1838.
Extract Military Department, dated 18th June 1838, with two Enclosures.
Extract Military Department, dated 8th October 1838, with five Enclosures.
Minute by the Hon. Mr. Amos, dated 19th December 1838, with draft of Act enclosed.
Minute by the Hon. A. Amos, Esq., without date, with another draft of Act enclosed.
Minute by the Hon. A. Amos, Esq., dated 27th December 1838, with a draft of Act enclosed.
Note by the same, dated 2d February 1839.
Letters from Major-general Casement to Mr. Amos, dated 20th and 23d April 1839.
Note by the Hon. Mr. Amos, dated 8th May 1839.
Draft Act, dated 20th May 1839.
Proposed Letter to the Military Authorities of the three Presidencies.

nourable the Court of Directors expressed their concurrence in this point of view in paragraph 171 of their despatch to the Madras government, dated 30th September 1835, No. 6, a copy of which paragraph accompanied the above resolution.

4. On the 30th January 1837 an extract from the proceedings of this government in the Political Department was received, with certain communications from the resident at Nagpore; and also correspondence which passed between the government of India and the Madras government, on a suggestion that in the modification of Regulation VII. of 1832 of the Madras Code as before proposed, a clause should be introduced for the purpose of providing for the trial of suits for real property situated within the cantonments beyond the British frontier.

5. The several papers above noticed were from time to time transmitted to the Indian Law Commission for consideration.

6. An extract from the Military Department, under date the 16th October 1837, was forwarded to this office, with a further communication from the Madras government on the subject of the Regulations for the recovery of debts due from the native soldiery at that presidency, and a resolution of the government of India thereon, to the effect that the expediency of making the proposed or other changes would be taken into consideration in this department.

7. A further extract from the said department, dated the 20th of the same month, was received for the same purpose, with the draft of a code of rules for the guidance of military courts of request, prepared in the Adjutant-general's office at this presidency.

8. In reply to these extracts, information was communicated to the Military Department, that the proposed Regulation for the guidance of military courts of request, which purported to cancel all existing Regulations on that subject at variance with itself, being clearly matter of legislation, could not be passed by the government in its executive capacity; that the measures to be adopted with this object would be made general, embracing the soldiery all over India; and that the military authorities at the several presidencies would be called upon to furnish the Legislative Department with the necessary information for enabling the government to frame an enactment comprehending the whole subject.

9. The Law Commission replied to the communication that had been addressed to them, by their secretary's letter of 15th June 1838, in which they noticed successively, with an expression of their own opinion upon each point, the several suggestions of the Commander-in-chief at Madras, and the resolutions of the Madras government passed on the 13th of August 1833, and approved by the Honourable Court. From this communication his Lordship will readily gather the chief points for consideration.

10. The Law Commissioners observed, that they inferred from the tenor of the letters with which these questions had been referred to them, that it had been the intention of government that they should be taken up in the course of the general revision of those branches of the law with which they are connected. But that they had nevertheless been induced to submit this Report, from a knowledge that a draft of new articles of war for the native troops, including rules for military courts of request, was then under the consideration of government.

11. The officiating secretary to the Governor-general for the North-western Provinces submitted, with his letter of 13th October last, a petition from Mr. J. Rawlins, a resident at Agra, complaining of the illegality of an ex-parte judgment passed against him by the military court of requests at that station, to which he alleged he was not amenable. The object of his Lordship in handing up the petition to the government of India was, that the several points therein noticed might meet such attention as they deserve, in considering the general rules for the guidance of the military courts of request then under discussion in this department.

12. A letter from the secretary to the government of Bombay, with a copy of the Regulations by which military courts of request are governed at that presidency, was transferred to this department from the Military Department on the 18th June last, with reference to the extract from this department, dated the 6th November 1837.

13. With another extract from the same department, dated the 8th of October last, this department received a report from the Judge Advocate-general of the Madras army upon the laws and regulations regarding military courts of request and courts martial for civil suits.

14. The subject has received much attention from the fourth ordinary member of

of Council, to whose minutes, dated as noted in the margin, you are requested to refer his Lordship. Amongst the papers herewith forwarded will be found two notes from Major-general Sir W. Casement, who was consulted on this occasion by Mr. Amos.

19 Dec. 1838.
No date, 1838.
27 Dec. 1838.
2 February 1839.
8 May 1839.

15. The whole matter has been incorporated into one Draft Act, which it is in the contemplation of the President in Council to circulate to the military authorities at the three presidencies, with a letter calling for their opinions, and any suggestions they may have to offer on the several provisions of the proposed Act. The substance of the letter with which it is proposed to circulate the draft Act will be seen in the paper hereto appended. The President in Council begs to call the attention of the Right honourable the Governor-general to this paper, and to request his Lordship's sentiments thereon, as well as on the several provisions of the Draft Act, before circulation or publication.

16. You are requested to return the original papers with the draft of Act, with your reply.

I have, &c.

Fort William, 20 May 1839. (signed) *J. P. Grant*,
Offg Secy to Govt of India.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India.

Legis. Cons.
12 August 1839.
No. 39.

Sir,

Legislative.

I am directed to acknowledge the receipt of your two letters of the dates and subjects noted in the margin;* and in reply to communicate as follows.

2. On the subject of the article of war for the native army, the Governor-general has recorded a minute containing such observations as have occurred to him with reference to the points on which Mr. Amos has invited discussion. A copy of that document is enclosed for submission to the Honourable the President in Council.

3. On the subject of the draft of Act for the better administration of justice in military courts of request, the Governor-general has studied with much attention, and his Lordship can suggest no better method of throwing light on the many points with regard to which doubts may be entertained, or of endeavouring to reconcile the differences in law and in practice which prevail in the military courts of request at the three presidencies, than that of issuing the circular which has been approved by the Honourable the President in Council, and his Lordship would wait for the returns to that circular before entering into any observations on the many points which are open to discussion.

4. On the present occasion, his Lordship has only to remark with regard to the request of attention to the 4 Geo. 4, c. 81, that this statute is about to be repealed and re-enacted, with alterations and amendments; and that, in his opinion, a solemn declaration is to be preferred to an oath, in the case of a commissariat officer, exercising judicial functions, should an oath be not indispensable under the provision of section 57 of the above-mentioned statute, which directs that the members of a court of requests, being Europeans, shall be sworn on the Holy Evangelists.

5. The Governor-general, however, would not, even for the present, take leave of the subject without gratefully acknowledging the soundness of the views and the laborious attention with which the fourth member of the Council has pointed out and endeavoured to overcome the difficulties of the proposed Act.

6. The original papers received with your letter, No. 320, are herewith returned.

I have, &c.

Simla, 4 July 1839. (signed) *T. H. Maddock*,
Offg Secy to the Govt of India with the Govr-general.

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* Letter, No. 324, dated 20th May 1839, with Enclosures on the subject of the enactment of articles of war for the discipline of the native army.

Letter, No. 320, dated 20th May 1839, on the subject of a proposed enactment for the better administration of justice in military courts of request in all the three presidencies of Bengal, Madras, and Bombay, with Enclosures.

No. III.–Part 2.
Military Courts of Request.

Legis. Cons.
2 August 1839.
No. 45.

RESOLUTION.

FORT WILLIAM, Legislative Department, 12th August 1839.

READ again, Letter from Chief Secretary, Government of Fort St. George, dated 1st December 1835, No. 927, with Enclosure.

Letter from Chief Secretary, Government of Fort St. George, dated 22d November 1836, No. 981, with Enclosure.

Extract Political Department, Government of India, dated 30th January 1837, No 16, containing Correspondence with Government of Fort St. George; viz. Letter from Mr. Chief Secretary Chamier, dated 9th January 1837, and from Mr. Secretary Macnaghten, in reply, dated 30th January 1837, and other papers.

Letter to Officiating Secretary, Indian Law Commission, dated 8th May 1837, No. 129.

Extract Military Department, Government of India, dated 16th October 1837, No. 224, with Enclosure, containing Letters from Military Secretary, Government of Fort St. George, of 2d August and 8th November 1836.

Extract Military Department, Government of India, dated 20th October 1837, No. 335.

Resolution of the Legislative Council, dated 6th November 1837, No. 17.

Read, Letter from Secretary, Indian Law Commission, dated 15th June 1838, No. 140.

Extract Military Department, Government of India, dated 18th June 1838, No. 285, containing Letter from Military Secretary, Government of Bombay, dated 22d May 1838, with Enclosure.

Letter from Officiating Secretary to the Governor-general, North-western Provinces, dated 13th October 1838, No. 2698.

Extract Military Department, Government of India, dated 8th October 1838, No. 180, containing Letter from Military Secretary, Government of Fort St. George, dated 11th September 1838, with four Enclosures.

Minute by the Honourable Mr. Amos, dated 19th December 1838, with draft of Act.

Minute by the Honourable Mr. Amos, no date, 1838, with draft of Act.

Minute by the Honourable Mr. Amos, dated 27th December 1838, with draft of Act.

Minute by the Honourable Mr. Amos, dated 2d February 1839.

Note I. by Major-general Sir William Casement, dated 20th April 1839.

Note II. by Major-general Sir William Casement, dated 23d April 1839.

Minute by the Honourable Mr. Amos, dated 8th May 1839.

Draft of proposed Act.

Draft of proposed Instructions.

Letter to Officiating Secretary, Government of India, with the Governor-general, dated 20th May 1839, No. 320.

Letter from Officiating Secretary, Government of India, with the Governor-general, dated 4th July 1839.

Resolution.—The Honourable the President in Council resolves that the military authorities of the different presidencies be requested to consider the draft Act, together with the papers noted at the foot of this resolution, containing suggestions for the improvement of courts of request for the recovery of debts against military persons, and of the administration of justice by commissariat officers, with a view to forming a general and amended system of law upon this subject, applicable to all the presidencies. Their attention should also be particularly requested to the statute 4 Geo. 4, c. 81, and to the Regulations of the several presidencies sent herewith.

2. It will be observed that in the Regulations of the several presidencies there is a want of uniformity upon the following points; viz. 1, the species of action which may be tried before the military tribunals in question; 2, the amount recoverable; 3, the descriptions of persons against whom suits may be brought; 4, the point whether the defendant must have been a military man at the time when the cause of action arose, as well as when the suit was brought; 5, the jurisdiction of military courts of request within the limits of the courts of request established

established in the presidency towns; 6, the persons convening courts of request; 7, the persons composing the courts; 8, the forms of procedure; 9, the execution of decrees; 10, rules to be pursued beyond the frontier. And it will be noticed that discrepancies upon most of the above matters occur both in respect of military courts of request, and also of the administration of justice in civil suits by commissariat officers. The military authorities will be requested to give their opinion upon each of the above matters, and to state in respect of each of them their reasons for preferring, in a general system, the rule of one presidency in preference to that of another, or their reasons for considering that a general rule in regard to any particular matters could not be conveniently adopted for all the presidencies; and also to offer such observations as they may think proper concerning the amendments of the existing Regulations proposed in the draft and the various papers, or which may occur to themselves.

3. Particular attention will be requested as to the point whether the punchayet system of Madras should be extended to the other presidencies, and whether the provisions in the draft respecting the administration of justice in civil suits by commissariat officers, and which are taken from the Madras and Bombay Regulations, can be conveniently extended to Bengal.

4. Attention will be requested to a matter which is much urged in the papers from Madras respecting the limiting of credit to be given in military bazaars. Difficulties appear to occur in limiting the amount recoverable in the military courts, without at the same time admitting the great inconvenience of any credit in excess being recoverable in the civil courts; the principle hitherto adopted having been, that parties were precluded from suing military men in the civil courts only in cases in which a prompt remedy was open to them in the military courts. In making any provisions for limiting credit given by a particular individual to a military man, it must be obvious that it will be difficult to prevent an extended credit being fraudulently given in a manner so as to make it appear that the extended credit has been given by a different individual. Should the military authorities be of opinion that credit in bazaars ought to be and can be conveniently restricted, it will be advisable that they should point out the most effectual and least objectionable way of accomplishing this object.

5. In adverting to the new provisions of the draft, it will be important to ascertain the opinion of the military authorities as to the propriety of allowing the commanding officer, in addition to his power of refusing to execute a decree, the power of sending it back to the same, or another tribunal once, oftener, or for an unlimited number of times.

6. In regard to the punishment of persons amenable to the articles of war for not attending as witnesses, refusing to give evidence, or committing perjury, it will be important to ascertain the most convenient mode of punishing such offences. On the one hand, there is a great convenience in the delinquency being punished promptly by the tribunal before which it arises; but, on the other, neither courts of request, nor the commissariat officer, appear to be so competent to deal with offences of such a nature as courts martial generally are. It may probably be thought by some that courts martial even are not a very fit tribunal for such purposes, and that if the courts of request and the commissariat officer are not to have jurisdiction, on the ground that tho effences are not incident to their proceedings, it may be the best course to transfer the offenders to the civil tribunals. The nature of the offences is not better suited for investigation by a military than by a civil court, but the distance of the proper civil court may prove an inconvenience to the military service.

7. Besides the rules of procedure before military courts, which have been laid down in the Regulations, there are various details of a minuter description, which are noticed in general orders, or suggested in the various papers noted at the head of this resolution, such as regard attendance of parties by representatives, interrogatories to distant witnesses, the swearing of the parties, the non-appearance of the parties, the interval of time allowed for the summoning of witnesses, and the like. It would be very desirable to embody in one uniform system the most expedient provisions of this nature that may be suggested by the military authorities of the several presidencies.

8. The like observations, as in the last paragraph, are applicable to various rules of evidence or practice; in regard, for example, to the proof of contracts, as requiring them to be in writing and in the languages of both the contracting parties, or the practice of the court in allowing a particular rate of interest.

 9. It

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Military Courts of Request.

9. It will be observed, that the provisions in the Regulations concerning the recovery of the debts before commissariat officers, are to be found in connexion with a multitude of miscellaneous provisions concerning military bazaars and cantonments: it may be a question for consideration how far the proposed Act should incorporate any of the provisions respecting bazaars and cantonments, which are so far applicable to the subject of the Act as they designate the limits of its operation as to the persons and places, or explain the capacity and jurisdiction of the commissariat officer.

10. It will deserve consideration, whether, in the proposed Act, the subject of the protection of military persons from suits in the civil courts should be particularly entered into, and, if this be thought advisable, whether the existing provisions upon the subject have in practice been found adequate.

11. On the subject of the recovery of debts beyond the frontier, particular attention will be requested to existing Regulations, and to the power of appeal which is proposed to be given in certain cases, both as regards the conferring of such a power, and the limitations and provisions by which it ought to be accompanied, and the tribunal to which the appeal ought to be.

12. On the subject of punchayets, if it shall be thought advisable to include them in the present Act, it would be desirable that draft clauses should be furnished incorporating the provisions in the Regulations, the principal decisions of the Madras Sudder Court, and the various amendments suggested, by means of which the law may be expressed in a compendious and improved form.

Ordered, that copies of the foregoing resolution, and of the papers noted in the margin,* being such as are not on record in that department, be forwarded to the Military Department of the government of India, whence the necessary orders will be issued to the military authorities at this presidency.

Ordered also, that copies of the resolution, and of the papers noted in the margin,† be forwarded to the government of Fort St. George and Bombay respectively, with a request that orders conformably to the resolution may be issued to the military authorities at those presidencies.

(signed) *J. P. Grant,*
Officiating Secretary to Government of India.

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* *To Military Department.*

From Chief Secretary, Government of Fort St. George, dated 1st December 1835, No. 927, with one Enclosure and Order.

From Chief Secretary, Government of Fort St. George, dated 22d November 1836, No. 981, with one Enclosure and Order.

Extract Political Department, dated 30th January 1837, No. 16.

To Officiating Secretary, Indian Law Commission, dated 8th May 1837, No. 129.

From Officiating Secretary, Indian Law Commission, dated 15th June 1838, No. 140.

From Military Secretary, Government of Bombay, dated 22d May 1838, No. 1483, with one Enclosure. (These papers were received in original with Extract Military Department, dated 18th June 1838, No. 285.)

From Officiating Secretary, Governor-general for the North-west Provinces, dated 13th October 1838, No. 2698.

From Military Secretary, Government of Fort St. George, dated 11 September 1838, No. 2981, with four Enclosures. (These papers were received in original with Extract Military Department, dated 8th October 1838, No. 180.)

Draft of proposed Act.

† *To Fort St. George.*

From Secretary, Indian Law Commission, dated 15th June 1838, No. 140.

Extract Military Department of the Government of India, dated 20th October 1837, No. 335.

Resolution of Legislative Council, dated 6th November 1837, No. 17.

Extract Military Department, dated 18th June 1838, No. 285, with two Enclosures.

From Officiating Secretary, Governor-general, North-west Provinces, dated 13th October 1838, No. 2698.

Draft of proposed Act.

To Bombay.

From Chief Secretary, Government of Fort St. George, dated 1st December 1835, No. 927, with one Enclosure and Order.

From Chief Secretary, Government of Fort St. George, dated 22d November 1836, No. 981, with one Enclosure and Order.

Extract Political Department, Government of India, dated 30th January 1837, No. 16.

To Officiating Secretary, Indian Law Commission, dated 8th May 1837, No. 129.

Letter from Officiating Secretary, Indian Law Commission, dated 15th June 1838, No. 140.

Extract Military Department, Government of India, dated 16th October 1837, No. 224, with one Enclosure.

Extract Military Department, Government of India, dated 20th October 1837, No. 335.

Resolution of the Legislative Council, dated 6th November 1837, No. 17.

Letter from Officiating Secretary, Governor-general North-west Provinces, dated 13th October 1838, No. 2698.

Extract Military Department, Government of India, dated 8th October 1838, No. 180, with five Enclosures.

Draft of proposed Act.

(No. 458.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *J. P. Willoughby*, Esq. Secretary to the Government of Bombay.

Legis. Cons. 12 August 1839. No. 46.

Sir,

I AM directed by the Honourable the President in Council to forward to you, to be laid before the Honourable the Governor of Bombay in Council, for the necessary orders, the accompanying copies of a resolution recorded by his Honour in Council, and of the papers referred to therein.

I have, &c.

Fort William, 12 August 1839. (signed) *J. P. Grant*,
Offg Secy to Govt of India.

(No. 457.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George.

Legis. Cons. 12 August 1839. No. 47.

Sir,

I AM directed by the Honourable the President in Council to forward to you, to be laid before the Right Honourable the Governor of Fort St. George in Council, for the necessary orders, the accompanying copies of a resolution recorded by His Honour in Council, and of the papers referred to therein.

I have, &c.

Fort William, 12 August 1839. (signed) *J. P. Grant*,
Offg Secy to Govt of India.

MINUTE by the Honourable *A. Amos*, Esq., dated 31st July 1839.

Legis. Cons. 12th August 1839. No. 48.

FIRST NOTE.

ACT.—On Sentences of Imprisonment by Courts Martial.

THIS draft is suggested by Mr. Robertson and General Casement in their minutes upon the articles of war. The expediency of passing the Act seems to depend on the point, whether it is so urgently wanted as not to admit of the delay which must occur before the proposed articles of war (in which the matter is provided for) can be received back from England and finally promulgated.

I am not competent to judge of this necessity; but I have been given to understand, that, as the only substitute which has been found effectual in the place of flogging, it has long been usual to punish soldiers with hard labour on the roads, in cases in which such punishment is not authorized by law or the existing articles of war.

I have thought it best not to affix a preamble, as it would not be advisable to proclaim the illegality of a practice which has been so common, and which is so necessary. For the same reason, I have given a declaratory as well as an enacting form to the Act.

(signed) *A. Amos.*

MINUTE by the Honourable *A. Amos*, Esq., dated the 8th August 1839.

Legis. Cons. 12 August 1839. No. 49.

SECOND NOTE.

On Punishments by Courts Martial.

I HAVE altered the draft Act in consequence of Mr. Robertson's note, and the conversation at the last Council.

It has been endeavoured, in the articles of war which are going to England, to remedy what I conceive to be a defect, (but I believe to the dissatisfaction of some, though not all the military authorities,) that the native articles of war for

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almost every offence award the punishment only in such vague terms as these: "I shall suffer punishment as by a court martial shall be awarded," "shall be punished according to the nature of his offence by the sentence of a court martial."

This vagueness probably arose from copying the articles of war for the English army; but the vague terms in the English articles are limited and explained by the Mutiny Act, of which the articles are little more than a compendium.

These vague terms would, if literally construed, authorise every species and degree of punishment. I collect that they have been usually construed as authorities for such kinds and degrees of punishment as the long course of precedents of native courts martial warranted. Since the abolition of flogging it would appear that it had been found indispensably necessary to stretch the use of the vague terms in question beyond former precedents; and, under shelter of them, to imprison with hard labour; and recently several sentences of courts martial, including hard labour with irons on the roads, have been duly confirmed.

It would, however, appear that on account of the apprehended illegality of such sentences, immediate and pressing inconvenience was experienced by the military service. I had thought that this apprehension extended only to the hard labour; but according to Mr. Robertson's note, it would appear to extend to imprisonment also. I cannot say that the apprehension is unfounded; for if long usage is not to determine what sentences are justified under such vagueness of words, it would be difficult to decide whether, on the one hand, such powers were not altogether void on account of uncertainty, or on the other, whether a court martial might not award tusheer, or any of Thera Waddy's favourite modes of punishment.

The period of imprisonment with hard labour may be modified either before or after publication of the draft. I thought it an object to avoid prolixity, and therefore have not made all the distinctions upon the subject which are made in the new articles of war, nor have I included solitary confinement.

(signed) *A. Amos.*

Legis. Cons. 12 August 1839. No. 50.

DRAFT OF ACT, dated the 12th August 1839.

ACT.—On Sentences of Imprisonment pronounced by Courts Martial.

1. IT is hereby declared and enacted, that in all cases in which any court martial is authorized by any articles of war for the government of the native officers and soldiers in the service of the East India Company, to punish any non-commissioned officer or soldier according to the nature of the offence and the discretion of such court martial, it is and shall be lawful for such court to sentence the person convicted to be imprisoned, with or without hard labour, for any period not exceeding two years, if the sentence be pronounced by a general court martial, or not exceeding one year if the sentence be pronounced by a district court martial, or not exceeding four months if the sentence be pronounced by a regimental or detachment courts martial.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

Legis. Cons. 12 August 1839. No. 51.

(No. 447.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India with the Governor-general.

Sir,

WITH reference to the minute of the Right hon. the Governor-general which accompanied your letter dated the 4th July last, I am directed by the Hon. the President in Council to request that you will lay before his Lordship the accompanying copy of a despatch addressed to the Honourable the Court of Directors on the present date. Copies of the minutes recorded by the members of the Honourable Board, with reference to his Lordship's observations, are also forwarded herewith.

No. 18, relative to the proposed articles of war.

Minute by the Hon. Mr. Robertson, dated 26th July 1839.
" " Mr. Bird, dated 27th July 1839.
" " Major-general Sir W. Casement, dated 29th July 1839.
" " " Mr. Amos, dated 31st July 1839.

2. I am

2. I am at the same time desired to request that you will submit for the consideration and opinion of his Lordship the accompanying draft of a proposed Act relative to sentences by courts martial of imprisonment by hard labour, together with the minutes as per margin, by the fourth ordinary member of our Board, explaining the objects of it, and the circumstances which have suggested the expediency of passing it.

Minutes by the Hon. Mr. Amos, dated 31st July and 8th August 1839.
Draft of Act, dated 12th August 1839.

3. His Honor in Council directs me to request that, in the event of the proposed Act meeting with the approbation of the Right hon. the Governor-general, you will obtain his Lordship's sanction to its being published, and his assent to its being finally passed without any material alteration.

I have, &c.

Fort William,
12 August 1839.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Legis. Cons. 23 September 1839. No. 1.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 447, dated the 12th ultimo, with enclosures, and in reply to convey the sanction of the Right hon. the Governor-general to the publication for general information of the proposed draft Act relative to sentences by courts martial of imprisonment by hard labour, together with his Lordship's assent, in the usual form, to pass the Act into law, its provisions being approved by him.

Legislative.

I have, &c.

Simla,
5 September 1839.

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India with the Governor-general.

ASSENT of the Right honourable the Governor-general.

Legis. Cons. 23 September 1839. No. 2. Enclosure. Legislative.

Simla, 5 September 1839.

I DO hereby, under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed Act relative to sentences by courts martial of imprisonment by hard labour, received from the Honourable the President in Council, in Mr. Officiating Secretary Grant's letter, No. 447, of the 12th August last.

(signed) *Auckland.*

RESOLUTION.

Legis. Cons. 23 September 1839. No. 3.

Fort William, Legislative Department, 23 September 1839.

As the inconvenience felt from the want of a law such as is herein undermentioned is pressing, and as no objections to a law of the nature contemplated are likely to be developed by public discussion, the Legislative Council of India, under the eighth Standing Orders of Council, resolves unanimously, that the second and third of the Standing Order of Council, passed under date the 6th of July 1835, be suspended with regard to the proposed Act relative to courts martial, to which the assent of the Right hon. the Governor-general under date the 5th instant has been obtained.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

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ACT No. XXIII. of 1839.

Legis. Cons. 23 September 1839. No. 4.

Passed by the Honourable the President of the Council of India in Council, on the 23d September 1839.

An Act for authorizing Sentences of Imprisonment, with or without Hard Labour, by Courts Martial, in certain Cases.

It is hereby declared and enacted, that in all cases in which, by a General Order of the Governor-general of India in Council, dated the 24th of February, in the year of our Lord 1835, it is made competent for courts martial to sentence soldiers of the native army in the service of the East India Company to the punishment of dismissal from such service, it is and shall be lawful to sentence such soldiers to be imprisoned, with or without hard labour, for any period not exceeding two years if the sentence be pronounced by a general court martial, or not exceeding one year if the sentence be pronounced by a garrison or line court martial, or not exceeding six months if the sentence be pronounced by a regimental or detachment court martial. And every soldier so sentenced to imprisonment with hard labour for any period whatever, or to imprisonment without hard labour for any period exceeding six months, shall after confirmation of his sentence be dismissed from such service: provided always, that all sentences under this Act pronounced by any court martial inferior to a general court martial, shall require the confirmation of the general or other officer commanding the division or field force to which the person convicted belongs.

(No. 162.)

Legis. Cons. 23 December 1839. No. 1.

Extract from the Proceedings of the Honourable the President in Council in the Military Department, under date the 9th December 1839.

Read a despatch, No. 4496, from the Acting Deputy Secretary to Government in the Military Department at Fort St. George, dated 12th ultimo, suggesting that draft of an Act for empowering criminal courts to receive into their gaols native soldiers sentenced to imprisonment for military offences, should receive the sanction of the government of India.

Ordered, That the foregoing despatch from the Acting Deputy Secretary to Government in the Military Department at Fort St. George, be transmitted in original to the Legislative Department for consideration, and that it may be returned when no longer required.

(True extract.)

(signed) *W. Cubitt*, Major,
Offg Secy to the Govt of India,
Military Dept.

(No. 4496.—Military Department.)

Legis. Cons. 23 December 1839. No. 2. Enclosure.

From Captain *J. H. Cramer*, Acting Deputy Secretary to Government, Fort St. George, to the Secretary to the Government of India, Military Department.

Sir,

6 November 1839. No. 869.

In forwarding the annexed copy of a letter from the Adjutant-general of the Army, for submission to the government of India, I am directed to state that the case therein brought to notice is specially provided for by Articles 80 and 81 of the proposed articles of war for the native army of India, a draft of which accompanied Mr. Officiating Secretary Maddock's despatch of the 19th of November last; but in the event of its being the intention of the Supreme Government to suspend for a time the publication of that Code of Regulations, it appears desirable to his Lordship in Council, that for the purpose of empowering criminal courts under this presidency to receive native soldiers sentenced to imprisonment for military offences under the recent Act, No. XXIII. of 1839, the draft of an Act submitted with a communication from this department of the 5th of January 1836, should receive the sanction of the Honourable the President of the Council of India in Council.

I have, &c.

Fort St. George,
November 1839.

(signed) *J. H. Cramer*, Captain,
Actg Depy Secy to Govt.

(No. 869.)

From Lieutenant-colonel *R. Alexander*, Adjutant-general of the Army, Fort St. George, to the Secretary to Government, Military Department.

Sir,

Major-general Sir H. Gough, commanding the army in chief, wishes to bring to the consideration of the Right honourable the Governor in Council, that with reference to a letter from the Chief Secretary to Government, addressed to the Chief Secretary to the Government of India, on the 5th January 1836, and the reply thereto, dated 1st February 1836, there is not at present any special authority for the reception of culprits sentenced under Act No. XXIII. of 1839, into the gaols of the criminal courts within this presidency; and as sentences will now be passed by courts martial in accordance with the above-named Act, I have the honour to convey the Major-general's request, that his Lordship in Council will be pleased to publish the necessary orders for the civil authorities to receive prisoners under sentences of courts martial.

I have, &c.

Adj^{t}-Gen$^{l's}$ Office, Fort St. George, 6 November 1839.

(signed) *R. Alexander*, L^{t}-Col^{l}, Adj^{t}-Gen^{l} of the Army.

(True copy.)

(signed) *J. H. Cramer*, Captain, Act^{g} Dep^{y} Sec^{y} to Gov^{t}.

(No. 35.—Military Department.)

From Lieutenant-colonel *S. W. Steel*, Secretary to Government, Fort St. George, to the Secretary to the Government of India, Military Department.

Sir,

Par. 1. In reference to your letter, No. 157, under date the 9th of November 1835, I am directed by the Governor in Council to submit for the sanction of the government of India, the accompanying draft of an Act, making the provisions contained in Regulation I. of 1828, in the Code of Fort St. George, applicable to sentences of all native courts martial, whether general, district or garrison, detachment or regimental, within the Company's territories.

2. A transcript of a letter in the Judicial Department, dated the 28th December 1835, from the Registrar of the Sudder and Foujdaree Udalut, with which the draft Act was received, is herewith forwarded.

3. I am instructed to state, that should the draft Act now submitted meet with approval of the Supreme Government, it is the intention of the Governor in Council to apply to individuals sentenced to imprisonment by courts martial the regulation by which they will be deprived of their military pay from the date of sentence to the date of their return to military duty.

I have, &c.

Fort St. George, 5 Jan. 1836.

(signed) *S. W. Steel*, L^{t}-Col^{l}, Sec^{y} to Gov^{t}.

Sudder and Foujdaree Udawlut.

(No. 242.)

From *W. Douglas*, Esq. Registrar to the Sudder and Foujdaree Udalut, to the Chief Secretary to the Government.

Sir,

I am directed by the judges of the Sudder and Foujdaree Udalut to acknowledge the receipt of an extract from the minutes of consultation in the Judicial Department, No. 976, dated the 18th instant, communicating, for their information and guidance, an extract from the minutes of consultation in the Military Department, dated the 15th instant, accompanied by a copy of a letter from the Secretary to the government of India, dated the 9th ultimo.

2. The opinion of the judges is required as to "whether the provisions of Regulation I. of 1828, can be ruled to be applicable to sentences of all native courts

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courts martial, whether general, district or garrison, detachment or regimental, within the Company's territories.

3. It appears to the judges, that inasmuch as Regulation I. of 1828 refers exclusively to sentences passed by a court martial under the 6th Article of Sect. 12, Regulation V. of 1827, its provisions cannot be ruled to be applicable generally to the sentences of native courts martial abovementioned; and in compliance with the instructions of the Government, they direct me to submit the accompanying draft of an Act, containing the provisions proposed to be enacted.

I have, &c.
(signed) *W. Douglas,*
Registrar.

Sudder and Foujdaree Udalut
Registrar's Office,
28 December 1835.

(A true copy.)
(signed) *S. W. Steel,* Lt-Col[l],
Secy to Govt.

ACT No. ——— of .

Passed by the Honourable the Governor-general of India in Council, on the .

Be it enacted, that from and after the date of the promulgation of this Act, the provisions contained in Regulation I. of 1828, in the Code of Fort St. George, shall be applicable to sentences of all native courts martial, whether general, district or garrison, detachment or regimental, within the Company's territories.

(signed) *W. Douglas,* Regr.

(A true copy.)
(signed) *S. W. Steel,* Lt-Col[l],
Secy to Govt.

(No. 45.)

From Colonel *W. Casement,* C. B. Secretary to the Government of India, Military Department, to Lieutenant-colonel *S. W. Steel,* Secretary to Government, Military Department, Fort St. George.

Sir,

Military Dept.
No. 7.
No. 11.

I am directed to acknowledge the receipt of your letter, No. 35, under date the 5th ultimo, with its enclosures, and to state in reply, for the information of the Madras government, that the proposed enactment appears to the Governor-general of India in Council to be unnecessary, as in the code of military regulations for the native troops of all the presidencies, which will speedily be published, provision is made for carrying into execution, through the medium of civil authorities when necessary, sentences of imprisonment awarded by a court martial.

I have, &c.
(signed) *W. Casement,*
Secy to the Govt of India, Mily Department.

Fort William,
1 February 1836.

Legis. Cons.
23 December 1839.
No. 3.
Imprisonment of soldiers in the criminal gaols.

Minute by the Hon. *A. Amos,* Esq., dated 11 December 1839.

The only practical question is, whether the necessity for the Act is so pressing as to require legislation in the interim before we may expect to receive back the articles of war, which will have reached England in November last.

With reference to this question, it is to be considered that the difficulty is only complained of at Madras; it clearly does not exist at Bombay; the Bombay Code providing, that "a prisoner sentenced by a court martial to imprisonment, or solitary confinement, or hard labour, may be forwarded to the criminal judge of the district by the commanding officer of the district, with an authenticated copy of

of the sentence, which the criminal judge shall execute according to its tenor:" Regulation XXII. of 1827, chap. 1, sect. 6, cl. 1, Bombay Code. And the difficulty does not exist, at least as to general courts martial, in Bengal, in consequence of Regulation IV. of 1820, passed for the removal of doubts. It would seem that the difficulty was not felt, as it has not been complained of in regard to courts martial of any kind within Bengal.

I have stated the above to be the only practical question, because I understand from the Commander-in-chief that the Madras Sudder Court maintains that the zillah gaols cannot receive soldiers sentenced to imprisonment by courts martial, except under Regulation I. of 1828, relating to imprisonment for offences beyond the frontier. Whether the sudder be right or wrong, the practical consequence of their maintaining such an opinion must, I suppose, be, the soldiers will not be received in the zillah gaols. With great deference, I should think the sudder were in error, for I suppose the zillah gaols of the Madras presidency must have been used for the confinement of prisoners capitally convicted within the frontier, and whose sentences have been commuted to imprisonment; and also, that under the words "such punishment as by the sentence of a court martial shall be awarded," which are of constant recurrence in the Madras Articles of War, general courts martial, at least, have awarded imprisonment for offences committed within the frontier, and that the offenders have frequently been imprisoned in the zillah gaols. However, be this as it may, I should think that the East India Company's gaols must, in point of law, be open to receive prisoners from any of the Company's courts, in the absence of any specific appropriation of particular gaols to particular courts, which I have not been able to find in the Madras Code. Some doubts might, indeed, arise as to the Company's courts being available by courts martial for the Queen's troops; and, perhaps, a difficulty may exist in regard to the Company's gaols within the frontier receiving prisoners convicted of offences beyond the frontier, for the removal of which latter supposed difficulty, Regulation I. of 1828, Madras Code, appears to have been passed; and it appears to me that this Regulation affords an argument that the framers of it did not think that any Regulation was necessary for prisoners convicted of offences within the frontier, and who might, in some cases, have been sentenced to imprisonment by courts martial before the late Act.

As to the form of the now proposed draft, it is taken from the articles of war, and is copied verbatim as it stands in the draft of articles submitted by Sir H. Fane, as prepared by a board of officers under his directions. Sir H. Fane is not at all warranted in a recent statement made by him, that the draft he submitted has been rejected; it has only been modified, as it obviously required essential modifications. With regard to the present clause, I abstained from an objection, that it would authorize imprisonment in gaols at any distance from the place where the offence was committed, or where the court martial sat; not because I doubted that the objection was tenable, but because I conceived that any practical abuse of the latitude given was not to be anticipated, and that more specific directions might sometimes be attended with inconvenience, and I felt reluctant to propose any alteration in Sir H. Fane's draft, where I did not see any decided and important practical objections. The draft Act sent from Madras restricts the power of imprisonment to the nearest gaol, and enjoins several details which the articles of war, as copied from Sir H. Fane's draft, omit.

I think it would be necessary to send the draft after publication to Madras and Bombay, before finally passing it. This would ordinarily create a delay of three months, though two might, under the circumstances, be deemed sufficient. Time is an important consideration with reference to an Act, the necessity for which may possibly be obviated by the receipt of the articles of war in two or three months.

(signed) *A. Amos.*

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Military Courts of Request.

Legis. Cons. 23 December 1839. No. 4.

Fort William, Legislative Department, 23 December 1839.

The following Draft of a proposed Act was read in Council for the first time on the 23d December 1839.

Act No. ——— of 1839.

An Act for Regulating the Execution of Sentences of Imprisonment passed by Courts Martial.

1. Whereas doubts have arisen whether by the Regulations of all the presidencies sufficient provision is made for all the cases in which sentences of imprisonment by courts martial are to be executed:

It is hereby declared and enacted, that whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, for any offence, it is and shall be the duty of every judge, magistrate, or other officer in charge of any gaol, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, garrison, regiment, or detachment by whose orders the offender is tried.

Ordered, That the draft now read be published for general information.

Ordered, That the said draft be reconsidered at the first meeting of the Legislative Council of India after the 4th day of February next.

(signed) *J. P. Grant*,
Offg Secy to the Govt of India.

(No. 641.)

Legis. Cons. 23 December 1839. No. 5.

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to Captain *J. H. Cramer*, Acting Deputy Secretary to Government in the Military Department, Fort St. George.

Sir,

With reference to your letter, No. 4496, dated the 12th ultimo, to the address of the Secretary to the Government of India in the Military Department, I am directed by the Honourable the President in Council to forward to you, for the information of the Right hon. the Governor of Fort St. George in Council, the accompanying printed copy of the draft of a proposed Act for regulating the execution of sentences of imprisonment passed by courts martial, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette.

I have, &c.

Fort William,
23 December 1839.

(signed) *J. P. Grant*,
Offg Secy to the Govt of India.

Legis. Cons. 23 December 1839. No. 6.

(No. 20.)

Fort William, Legislative Department.

Resolution, dated 23 December 1839.

Read an extract Military Department, dated the 9th instant, No. 162, forwarding letter from Acting Deputy Secretary to Government in the Military Department at Fort St. George, suggesting that draft of an Act for empowering criminal courts to receive into their gaols native soldiers sentenced to imprisonment for military offences, should receive the sanction of the government of India.

Ordered, that a printed copy of the draft of a proposed Act, read in Council for the first time under this date, be forwarded to the Military Department, in reply to the extract from that department of the 9th instant, No. 162.

Ordered, that the original papers which accompanied the extract be returned.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

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Military Courts of Request.

(No. 640.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India with the Governor-general.

Legis. Cons. 23 December 1839. No. 7.

Sir,

I am directed by the Honourable the President in Council to forward to you, to be laid before the Right hon. the Governor-general of India, the accompanying printed copy of the draft of a proposed Act for regulating the execution of sentences of imprisonment passed by courts martial, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette, together with copies of papers connected therewith, as noted in the margin. If his Lordship approve of the proposed enactment, you are requested to procure the assent required by Sec. 70 of the Charter Act to their being passed without any material alteration.

Extract Military Department, dated 9 December 1839. Minute by the Hon. Mr. Amos, dated 11 Dec. 1839.

I have, &c.

Fort William, 23 December 1839.

(signed) *J. P. Grant*, Offg Secy to Govt of India.

From *T. H. Maddock*, Esq. Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Legis. Cons. 10 February 1840. No. 1.

Sir,

I am desired to acknowledge the receipt of your letter, No. 640, dated the 23d ultimo, with its enclosures, and in reply, to transmit to you the Governor-general's assent to pass into law the proposed Act for regulating the execution of sentences of imprisonment passed by courts martial, the provision of the enactment being approved by his Lordship.

Legislative.

I have, &c.

Camp Gwalior, 13 Jan. 1840.

(signed) *T. H. Maddock*, Secretary to the Government of India with the Governor-general.

Assent of the Right Honourable the Governor-general.

Legis. Cons. 10 February 1840. No. 2. Enclosure. Legislative Dep.

Camp Gwalior, 13 January 1840.

I do hereby, under sect. 70, 3 & 4 William 4, cap. 85, give my assent to the proposed Act for regulating the execution of sentences of imprisonment passed by courts martial, received from the Honourable the President in Council in Mr. Officiating Secretary Grant's letter, No. 640, dated the 23d December 1839.

(signed) *Auckland.*

Minute by the Honourable *A. Amos*, Esq., dated 14 January 1840.

Legis. Cons. 10 February 1840. No. 3. Military Imprisonment Act.

With reference to the remarks in the accompanying newspaper, I think there is weight in the argument, as applied to the Queen's and Company's European troops, the laws with regard to which we cannot affect. Their troops, would, I conceive, be excluded from our draft by necessary implication; and I presume the draft was mainly, if not entirely directed to cases in which imprisonment is awarded instead of flogging under the recent Act, No. —— of 1839. All misconception will be removed by inserting the words (after "whenever") "under Act, No. —— of 1839."

The words "is and" had better be omitted, in order to avoid a piece of plausible criticism. In fact, the sense is, that "in all future sentences, the magistrate will be bound not only by this new law, but by that duty which now is imposed upon him." The object is not, as suggested in the newspaper, to legalise what by the Act is virtually pronounced to be illegal; but the phraseology indicates that doubts have arisen respecting the legality of the former practice, and that although it is expedient to pass a new Act for the purpose of removing doubts, no alteration is in fact made. I think the word "declare" will indicate this

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this sufficiently without inserting the words "is and," which to a casual reader must appear ungrammatical.

Perhaps in the concluding lines general courts martial assembled by order of the Commander-in-chief are not sufficiently provided for. I propose, therefore, to omit the words "officer, &c." down to "detachment," and to substitute the word "authority."

(signed) *A. Amos.*

Legis. Cons. 10 February 1840. No. 4. Military Imprisonment Act.

MINUTE by the Honourable Sir *W. Casement*, C.B., dated 18 January 1840.

THE argument in the Englishman, of the 14th instant, does not appear to me well considered. It is true that by sect. 7 of the Annual Mutiny Act a general court martial, and by section 9, a district or garrison court martial in Her Majesty's service, are to sentence any soldier to imprisonment, with or without hard labour, in any public prison, or other place which such court, or the officer commanding the regiment or corps to which the offender belongs or is attached, shall appoint; but no power of selection of place of imprisonment is given to regimental courts martial in Her Majesty's service, (*see* sect. 10); and such courts, therefore, would appear to have no such privilege.

With regard to the commanding officer of the regiment being the only person empowered to give authority to the gaoler to receive the sentenced person, section 27 runs thus:

"27. And be it enacted, that every gaoler and keeper of any prison or house of correction in every part of Her Majesty's dominions shall, upon the order in writing of any commanding officer of a district, garrison, regiment, or corps, (as the case may be,) receive into his custody any soldier under sentence of imprisonment by a general or other court martial, and keep him in a proper place of confinement, with or without hard labour, according to the sentence of the court, and during the time specified in the said order, or until he be discharged, or shall, although the period for which the soldier was originally committed may not have expired, deliver him up to any person producing an order in writing to that effect from any such commanding officer as aforesaid; and every such gaoler who shall refuse to receive and to confine any such non-commissioned officer or soldier in manner as aforesaid, shall forfeit for every such offence the sum of 100 *l.*"

Now, as no part of the Act gives power to commanding officers of districts, or garrisons, or any others, to imprison, except in their capacity as approvers of sentences of courts martial, it follows that either sect. 27 of the Act is of no authority, or that by its provisions the power to order admission into gaol is not limited to regimental commanding officers.

Further, as regards the Company's Mutiny Act, the Englishman quoted sect. 24 only, and founds his conclusion upon that, wholly omitting sect. 23, which contains no such limitation:—

"23. Provided always, and be it further enacted, that it shall be lawful for such general courts martial, by their sentence or judgment, to inflict imprisonment, solitary or otherwise, or corporal punishments, not extending to life or limb, as such court shall think fit, on any non-commissioned officer or soldier, for immoralities, misbehaviour, or neglect of duty; or to adjudge a forfeiture of all benefit or advantage as to increase of pay, or as to pension, which might otherwise have accrued to such non-commissioned officer or soldier, from the length or nature of his service."

"24. Provided always, and be it further enacted, that it shall be lawful for any general or other court martial to sentence any non-commissioned officer or soldier to imprisonment in any fortress or garrison, or other suitable place of safe custody."

To state the matter fairly, it appears to me that it should have been said, that though sect. 23 leaves open, in the case of a general court martial, the choice of place of imprisonment, sect. 24 gives all courts the power, if they choose to assume it, to fix upon any public prison, fortress, &c. This construction, if correct, is important, because, under these sections, the General Order by the Commander-in-chief, dated 15th May 1824, was evidently issued.

General Order, Commander-in-chief, May 1824: "The Commander-in-chief, taking into consideration how ill adapted the zillah gaols are for the accommodation of European soldiers, sentenced by regimental courts martial to confine-

ment

ment, particularly if for any lengthened period, his Excellency enjoins regimental and other courts martial, on all future occasions of passing sentences of that nature, to express their award in general terms, leaving it to the approving officer to fix upon the place of confinement he may deem, under all the circumstances of the case, best calculated to answer the object in view."

The practice to this day is that prescribed in this order. If the proposed Act is to be restricted to the native army, it must be taken to be an enlargement of the already existing Regulation No. IV. of 1820, clause 2, which is as follows:—

"2. It is hereby declared that any zillah or city magistrate shall be competent to give effect to the sentence of a general court martial, adjudging imprisonment with labour among the convicts of the civil power, on the offender being delivered into his custody, and the sentence being certified to him for the purpose of his giving it effect, by the Judge-advocate-general, or his deputy, under the authority of the Commander-in-chief; and the sentence so certified shall serve as the magistrate's warrant and authority for carrying it into effect according to the terms of it."

I think some allusion should be made to that particular Regulation in the preamble to the proposed new enactment. If this is not done, it will remain in force, as far as it goes, and there may arise doubt whether the Judge-advocate-general or his deputy, as laid down in that Regulation, or the officer commanding district, &c. as laid down in the new enactment, is to certify to the gaoler.

If it be intended to restrict the new Act to the native army, Mr. Amos's suggestion to insert the words (after "whenever") under Act No. XXIII. of 1839," will remove all misconception (except, perhaps that just alluded to as to the Regulation IV. of 1820.)

I would certainly leave out the words "is and", on the grounds stated by Mr. Amos.

Regarding the termination of the proposed enactment, the suggested substitution of the word "authority" for the words "officer," &c. down to "detachment," would not, I think, meet the case. The majority of cases in which non-commissioned officers and sepoys (and the same of European soldiers) are tried by general courts martial, and sentenced to the severer punishments, are cases in which the trial has been ordered by the general officer commanding the division or field force, without previous reference to head-quarters of the army; yet all such trials are of course submitted to the Commander-in-chief for confirmation. It is not necessary, and can hardly be desirable in any case, that the Commander-in-chief should certify sentences to magistrates and others. It may conveniently be done by commanding officers of divisions, &c.

I apprehend this Act might conveniently be made to embrace all cases, both European and native. Though an Act of the government cannot affect or alter the Mutiny Acts, it may, I believe, appropriately come in to their aid, and legislate supplementarily where those Acts are silent.

Now, in the Company's Mutiny Act, though power is given to sentence to imprisonment in public gaols, no provision is made for the necessary authority to be given to the gaoler to receive the criminal. In the case of Lieutenant Stokes, of the Madras army (reported in the accompanying newspaper,) the deficiency of the Act in that respect was made manifest, and it is a deficiency likely to occur in every case of imprisonment where a gaol is selected, whether for military or other crimes.

If the proposed Act is to be confined to the native army, I would suggest that it stand thus (after a preamble, cancelling the Clause 2 of Regulation IV. of 1820, above adverted to):—

"It is hereby declared and enacted, that whenever under Act No. XXIII. of 1839, any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, for any offence, it shall be the duty of every judge, magistrate, sheriff, or other officer in charge of any gaol, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by any officer commanding a division, garrison, regiment, or detachment, as the case may be."

If the proposed Act is to embrace the European as well as the native army, I would suggest that it stand in the following terms:—

"It is hereby declared and enacted, that whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, for any offence, it shall be the duty of every judge, magistrate, gaoler, or other officer in charge

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of any gaol, to give effect to such sentence, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by any officer commanding a division or district, garrison, regiment, corps, or detachment, as the case may be."

It appears to me that this wording recognises and makes applicable to India as much as is wanted of the 57th section of the annual Mutiny Act; that it supplies a great desideratum in the Company's Mutiny Act, the 4 Geo. 4, c. 81, and that it provides for the reception of prisoners, under Act XXIII. of 1839, of this government.

(signed) *W. Casement.*

Legis. Cons. 10 February 1840. No. 5. Second Note or Minute; military imprisonment.

MINUTE by the Honourable *A. Amos*, Esq.

THE 27th section of the Mutiny Act makes it clear that there is nothing objectionable, on the face of our draft Act, on the ground of its affecting the Mutiny Act for the Queen's troops. Whether, under the Mutiny Act and our Act, the commanding officer of a district, &c. can alter or supply the omission of a place of custody in the sentence of a court martial, or in the order of the regimental commander, is a different question; and, again, that question may vary, as it concerns general district or garrison courts martial, on the one hand, and, on the other, regimental courts martial.

So there is nothing objectionable, on the face of our draft Act, on the ground of its affecting the Company's Mutiny Act, as there is nothing in our draft Act to prevent the place of custody being named in the sentence of the court.

With regard to the Mutiny Act for the Queen's troops, it appears to extend to India, and is complete in its provisions. But the Company's Mutiny Act is not, according to the construction which I collect it has received, so complete, as making no express provision for imprisonment in gaols. And if a power to imprison in gaols be necessarily incidental to every court which has power to imprison (which I think is the law), or if that power be conferred by the terms "other suitable place," (which I think it would not be), still the requisition on the gaoler is not expressly provided for; and it would seem that, in consequence of such omission, it has been held (wrongly, I think, and perhaps Lieutenant Stokes's case is not authority for this point), that gaolers are not bound to receive European military convicts.

Though the point is of some nicety, I do not think we should be altering or affecting the Company's Mutiny Act, by placing the reception into gaols of military European convicts in the Company's service upon the same footing as military convicts in the Queen's service.

But if we were to enact, in the terms of the General Order of 1824, that in substance, neither the courts of the Queen's or Company's European troops, nor the regimental officers of the Queen's troops, should specify the place of confinement, but that it should be determined by the approving officer; or even, perhaps, that it might be determined, and not merely certified by such officer; this, I think, would be altering the Mutiny Acts. The Englishman wrongly argues that our draft Act, upon the face of it, imports this; whereas it imports no more than the 27th section of the Queen's Mutiny Act.

Another reason why the proposed draft is not wrong upon the face of it is, that, in legal construction, it would be regarded as intended to be applied to the native troops only, provided it would really affect the Mutiny Acts, if applied to European troops; indeed the preamble of the draft indicated its application exclusively to native troops. The general expressions of the Act would be regarded as necessarily limited by the powers of the Indian legislature, without expressly confining those expressions to the native troops.

I see no objection to adopting the principle of Sir W. Casement's first draft, which would probably be held by the courts legally to afford some additional facilities as to the imprisonment of the Company's European troops, besides removing the objections (unseasonable as I think them), to the reception, in the Madras presidency, of convicts under Act XXXIII. of 1839: whether the regimental commander or the sentence of the court must not, in the case of European military convicts, specify the place of custody, our Act does not profess to determine. If provisions for reception of the Company's European military convicts within

within gaols are not virtually, as they are not expressly, given by the Company's Mutiny Act, our Act supplies them, subject to the legal question of this being an affecting or altering the Company's Mutiny Act, which I think it is not. As to convicts under Act XXXIII. of 1839, our Act clearly removes the scruples of the Madras authorities; and the objections in the Englishman, founded on the Mutiny Acts, are of course inapplicable to the native troops.

I have redrafted the Act, with reference to the further consideration which it has undergone, and in closer conformity with the 27th section of the English Mutiny Act.

Although the annexed draft has an advantage in uniformity, and perhaps on other grounds, yet if it is not likely to work well, as throwing too much responsibility on Indian gaolers, or for other reasons, General Caseman's draft had better be adopted.

Vide below for new draft.

23 January 1840. (signed) *A. Amos.*

AN ACT for making further Provision concerning the Imprisonment of Persons under Sentences of Courts Martial.

IT is hereby declared and enacted, that every gaoler shall, upon the order in writing of any commanding officer of a district, garrison, regiment, or corps (as the case may be), receive into his custody any person under sentence of imprisonment by a court martial, and keep him in a proper place of confinement, with or without hard labour, according to the sentence of the court; or shall, although the period for which such person was originally committed may not have expired, deliver him up to any person producing an order in writing to that effect from any such commanding officer as aforesaid; and every such gaoler who shall refuse to receive and to confine any such person in manner as aforesaid, shall forfeit for every such offence, on conviction before any magistrate or justice of the peace, the sum of 1,000 rupees; and it shall be the duty of every judge, magistrate, or other officer in charge of any gaol, to give effect to every such sentence and order aforesaid.

And it is hereby enacted, that Sect. 2, Regulation IV. of 1820, of the Bengal Code, and Clause 1, Sect. 6, Regulation XII. of 1827, of the Bombay Code, are repealed.

ACT No. II. of 1840.

Legis. Cons. 10 February 1840. No. 6.

Passed by the Honourable the President of the Council of India in Council, on the 10th February 1840.

AN ACT for regulating the Execution of Sentences of Imprisonment passed by Courts Martial, in certain Cases.

1. IT is hereby declared and enacted, that whenever under Act No. XXIII. of 1839, any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, for any offence, it shall be the duty of every judge, magistrate, sheriff, or other officer in charge of any gaol, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, garrison, regiment, or detachment, as the case may be, to which the offender belongs.

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—(A.) No. IV.—

ENFORCEMENT OF FINES.

(No. 105.)

Legis. Cons. 28 May 1838. No. 11.

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Indian Law Commissioners to request that you will submit for the consideration of the Honourable the President in Council the following observations on the subject to which the papers enclosed with Mr. Macnaghten's letter, No. 266, of the 7th August 1837, relate.

2. The origin of this reference is an application from the judge of zillah Chittagong to the Calcutta Sudder Dewanny Adawlut, to know whether in case of the non-attendance of a party fined under Sect. 12, Regulation III. of 1793, Sect. 21, Regulation IV. of 1793, or Sect. 3, Regulation XIII. of 1796, the fine may be levied by the usual process for the execution of decrees. The inquiry also embraces another point which, perhaps from the judge's letter having been imperfectly transcribed, is not clearly ascertainable, but which seems to be, whether the preferring a litigious appeal is, under Sect. 3, Regulation XIII. of 1796, to be considered a contempt of court, and whether both the person and property of the offender are liable for the satisfaction of the fine which may be imposed under the authority of that section.

3. With regard to fines imposed under Sect. 12, Regulation III. of 1793, viz. for the institution of second suits, and for preferring frivolous, vexatious, or groundless suits, it has apparently been determined that such fines cannot be realized by distress.

4. With respect to fines imposed under Sect. 3, Regulation XIII. of 1796, viz. for preferring litigious appeals, both Courts of Sudder Dewanny Adawlut agree that such fines can be realized under the rules prescribed for the execution of decrees.

5. With respect to contempts of court made punishable by Sect. 21, Regulation IV. of 1793, such as are committed in open court are specially provided for in Sect. 6, Regulation XII. of 1825; but the question respecting the levy of the fine in other cases of contempts, viz. undue arrogation of the authority of the court, and illegal exertions of judicial authority in his (the offender's) own cause, does not appear to have been set at rest. It is to be presumed, therefore, that in such cases, as in cases of fines imposed under Sect. 12, Regulation III. of 1793, the property of the offender is not liable to attachment.

6. The Law Commissioners observe, that in the cases of contempts, not provided for by Sect. 6, Regulation XII. of 1825, and in the cases falling within Sect. 12, Regulation III. of 1793, the law is defective in two respects: first, the courts have no means of realizing the fine unless the offender be apprehended; secondly, if the offender be apprehended, and the fine imposed is beyond his means, he is liable to be imprisoned all his life, though no doubt, in practice, the law would never be allowed this extreme operation. But the Law Commissioners believe that fines are rarely imposed under Sect. 12, Regulation III. of 1793, and that they are still more rarely, perhaps never, imposed under Sect. 21, Regulation IV. of 1793, for contempts, other than contempts in open court. It is plain that the Courts of Sudder Dewanny Adawlut are hardly aware of any such occurrence. From the papers now under examination, it does not appear that any practical inconvenience is felt from the present state of the law, such as would render a special enactment necessary.

Clauses 196 and 197. Clauses 51 to 57.

7. The enactment of the proposed penal code would provide punishments for preferring groundless suits, and for contempts of court in open court; and general rules are therein laid down for the confinement of delinquents in default of payment of fines, and for the levying of fines. The particular mode in which fines are to be levied, remains of course to be provided for in the code of procedure. The enactment of the penal code, therefore, which would repeal all the penalties

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penalties in the existing Regulations, when accompanied with the rules of procedure necessary for carrying it into effect, would obviate all anomaly in respect of the realization of fines. Under these circumstances, the Law Commissioners do not recommend the passing of a special law immediately for that purpose.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
2 March 1838.

Draft of Act, dated 28 May 1838.

Legis. Cons. 28 May 1838. No. 12.

1. It is hereby enacted, that in all cases of fines, penalties, and forfeitures, by which offenders are or may be punishable by any court of justice, or upon summary conviction, by any Act or Regulation now in force, or by any Act which shall hereafter be passed, it shall be lawful for the court, or for the officer before whom such offenders are or may be so punishable, on conviction, upon any fine, penalty, or forfeiture not being forthwith paid, to imprison the offender, if the fine, penalty, or forfeiture do not exceed 100 rupees, for any period not longer than two months, and, if it exceed that sum, for any period not longer than six months, unless such fine, penalty, or forfeiture, shall be sooner paid or satisfied.

2. And it is hereby enacted, that upon any fine, penalty, or forfeiture being paid as aforesaid, it shall be lawful for such court or officer as aforesaid, by order of court, or by warrant under the hand and seal of such officer, to levy such fine, penalty, or forfeiture by distress and sale of the goods and chattels of the party offending; but such proceeding by distress shall not prevent the imprisonment of the offender as aforesaid, except from such time as the fine, penalty, or forfeiture shall be thereby satisfied.

3. And it is hereby enacted, that in all cases where offenders by any Act now in force, or which hereafter may be passed, are or may be made punishable by conviction before a magistrate, they shall be punishable in like manner before a justice of the peace, and before any person lawfully exercising the powers of a magistrate.

4. And it is hereby enacted, that in all cases in which offenders are or may be made punishable upon conviction by any Act now in force, or which shall hereafter be passed, it shall be lawful for the officer before whom the offender is punishable, on conviction, to receive proof of the commission of the offence, upon oath, to be by him administered, or upon solemn affirmation.

5. Provided always, that this Act shall not extend to any courts of justice established by virtue of any Royal charter.

(signed) *R. D. Mangles*,
Officiating Secretary to the Government of India.

(No. 188.)

Cons. 28 May 1838. No. 13.

From *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of Bengal.

Legislative. *Sic.*

Sir,

With reference to Mr. Secretary Mangles' letter, No. 1345, dated the 27th July last, with its enclosures, and to yours of the 6th February last, No. 302, with its enclosures, I am directed by the Honourable the President in Council to forward to you the accompanying copy of draft of Act for enforcing fines by imprisonment, &c. and to request that you will be pleased, with the permission of the Honourable the Deputy-governor of Bengal, to consult the Sudder Court at the presidency, and the chief magistrate, whether the proposed Act will sufficiently supply the defects in the existing laws pointed out by them respectively.

2. The original papers which accompanied your letter are herewith returned.

I have, &c.
(signed) *R. D. Mangles*.

Council Chamber, 28 May 1838.

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(No. 1313.)

Cons. 16 July 1838. No. 7.
Judicial Dep.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department, dated Fort William, 30 June 1838.

Sir,

With reference to your letter (No. 188), dated the 28th ultimo, and its enclosure, I am directed by the Honourable the Deputy-governor of Bengal, to request you will lay before the Supreme Government the accompanying copies of two letters from the Register of the Nizamut Adawlut, and chief magistrate of Calcutta, dated respectively the 22d and 27th instant. I have, &c.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 1725.)

Cons. 16 July 1838. No. 8. Enclosure.

From *J. Hawkins*, Esq. Registrar of the Nizamut Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department, dated Fort William, 22 June 1838.

Sir,

Nizamut Adawlut.
Present: R. H. Rattray, W. Bradden, N. J. Halhed, Esqrs. Judges. W. Morrey, and J. R. Hutchinson, Esqrs. Temporary Judges.

I am directed by the court to acknowledge the receipt of your letter, No. 1096, of the 5th instant, and to state in reply, for the information of the Supreme Government, that they consider the proposed Act to be sufficient for the objects in view.

I am, &c.

(signed) *J. Hawkins*, Registrar.

From *D. M'Farlan*, Esq. Chief Magistrate of Police, Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

I have the honour to acknowledge the receipt of your letter of the 5th instant, No. 1097, giving cover to the draft of a law for levying fines.

2. I have the honour to report that the present draft would amend sufficiently what appeared to me at the time of writing my former letter to be wanting in Act No. XII. of 1837, of the Supreme Government. A more mature consideration of the Acts passed since the last charter suggests the following remark. The Press Regulation XI. of 1835, states no commutation of imprisonment in default of payment of fine. This draft, if it applied, would give six months' imprisonment in default of payment of a fine of 5,000 rupees; but it is not, I suppose, intended that magistrates should inflict punishment under this Act, and, supposing the Supreme Court to do so, this draft will not help them; the fine will be null. That of XVIII. of 1835, speaks of fine and imprisonment as for a misdemeanor; this word, under English law, comprehends a most extensive limit of punishment, such as, I presume, the present draft does not contemplate in any respect: independent, however, of the object in hand at present, I venture strongly to urge an amendment of that Act; mischief may be done under it with which the Government would be fairly chargeable. I beg also to suggest that the definite phrase "fine" may, in all the Acts, be altered to fine of some given amount. It is meant, no doubt, to be inferred that a man who is a magistrate or other judge must be as fit to settle the amount of a fine as to settle whether a person should pay any fine at all; practically, however, a great variety of opinion will always be found in such matters as the amount of a fine, even among conscientious and sensible men, and it is a great relief to have such points settled beforehand. There may, perhaps, be cases under the customs and similar laws where it would be profitable for a man to pay the fine rather than obey the law; these might be especially provided for, if they exist at all.

3. I observe, however, that the proposed law is intended to embrace bygone Acts of every description,* and very considerable doubts may exist in regard to the propriety of its provisions. The Rule, Ordinance, and Regulation of November 1814, provides penalties far more severe than this draft, and if the draft is to prevail, it in effect annuls the severity of that rule. By it any person

* Viz. Acts of Parliament, Regulations of the Local Government, and Rules, Ordinances, and "Regulations" passed by the local governments with consent of the Supreme Court.

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person who fails, on conviction, to pay a fine of 10 rupees, and from whose goods distress cannot be levied, may be imprisoned for six months; now nothing is alleged against the working of that rule, and it seems needless to alter it.

4. So also in the Rule, Ordinance, and Regulation against gambling, passed on 17th April 1820, sect. 1, the penalty is 100 rupees, but if not paid, the imprisonment is three months; and in the 2d clause the fine is 50 rupees, but the imprisonment on default is three months.

5. So also in the Rule of November 1821, the fine is rupees 50, commutable, if not paid, to three months' imprisonment.

6. The 9th Geo. 4, cap. 74, clause 44, gives a different scale of commutation from that given in the draft, and perhaps a better one. The 97th clause, however, gives a very large power to justices; is that clause to be abolished by the draft becoming law?*

7. The draft, I presume, does not take in the case of refusal or non-ability to pay assessments (*vide* 33 Geo. 3, cap. 52, clause 158). A question might be raised on the word "forfeiture," and upon that a most important question might come to be decided, viz. whether a poor creature, whose poverty disenables him to satisfy the dues paid by the wealthy for their comfort, might not be sent to gaol. It might, perhaps, be well to exclude this case specially.

8. The kind of imprisonment intended is not stated. I suppose, however, that no labour being specified, simple imprisonment is meant. This would be a great defect if the Act applied generally to all our Calcutta offences.

9. Upon these grounds I venture with deference to submit, that the draft had better be altered, so as to provide a commutation of imprisonment only in cases where existing Regulations were silent on the subject, and perhaps some such scale as the 44th clause above-mentioned gives had better be adopted.

10. In clause 2 of the draft the word "thereby" seems superfluous. If the fine is paid, it seems of no consequence whether it is from proceeds of distress or the charity of a friend.

11. Are the judicial acts of a collector of customs, as in Regulation XXV. of 1836, affected (*see* also clause 24 and clause 30 of that Act, which seem somewhat at variance with each other.)

12. Clause 3:—Persons may, no doubt, be magistrates without being justices of the peace, but I do not think we have any knowledge in this country of justices of the peace not being magistrates. This clause might apparently be shortened.

13. Clause 4:—In the mofussil, I think, solemn affirmation before a judge or magistrate in a judicial matter is always considered to be an oath, and if proved false would be punished as perjury. The necessity for the clause, according to that law, is not apparent. In Calcutta we have never, that I know of, had occasion to prosecute for perjury committed in the cases not comprehended within the common or statute law, and all our old bye-laws give us power to administer oaths. The new laws may, however, require that oaths administered under them in Calcutta should be guarded by the imposition of the penalties attached to perjury.

I have, &c.

(signed) *D. M'Farlan*, Chief Magistrate.

Calcutta Police Office, 27 June 1838.

Judicial Department, the 30th June 1838.

(True copies.)

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Minute by the Honourable *A. Amos*, Esq., dated 16 July 1838.

Cons. 16 July 1838. No. 9.

In order to explain my views concerning the draft of Act for enforcing fines, it is necessary to state briefly the distinction between the powers of magistrates at the presidencies and those in the mofussil of Bengal.

The magistrates at the presidencies, as I collect, have no authority except under their commissions, or as specially delegated to them by particular Acts of the Legislature, which are, *pro tanto*, separate commissions. The extent of their general powers is, as in England, not free from doubt, but I think it may be stated that they have no general power of summary (*i. e.* out of sessions)

* I am not aware that there is any special benefit in retaining this clause.

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sessions) conviction and punishment, and that their power of committing does not extend to all offences, especially if they be newly created, have not a direct tendency to a breach of the peace, and do not amount to misdemeanors; where they have a power of punishment conferred on them by a new Act of the legislature, that power is strictly construed; if it be a power of "fining," such power does not include that of distraining or imprisoning, for the purpose of enforcing the fine, and it is very doubtful whether it includes a power of examining upon oath. In English statutes it is the constant course to superadd these powers, by special provision, to that of fining.

The mofussil magistrates have general powers for examining upon oath, and committing for all crimes and misdemeanors (Regulation IX. 1793, Regulation IX. 1807); and they have general powers for fining, and enforcing the payment of fines by imprisonment, to the extent of 200 rupees, and six months, in case of crimes and misdemeanors, (Regulation XIV. 1797, Regulation IX. 1807.) They have a criminal jurisdiction as justices of the peace over Europeans in certain cases, specified in the statute 53 Geo. 3, ch. 155. In other cases they commit Europeans to the Supreme Court, under Regulation II. of 1796, and Regulation XV. of 1806. According to the practice in the mofussil, any offence punishable by fine would be considered a misdemeanor; whereas in English law, offences which are punishable summarily by magistrates, are not properly misdemeanors; they are frequently not regarded in a criminal light, the penalty being recoverable by civil suit, as well as by conviction before a magistrate.

Having premised these observations concerning the powers of the presidency and mofussil magistrates, I proceed to notice the operation of the Acts of the Supreme Council from the year 1834 to the present time.

These Acts in general omit any means whereby a fine imposable by a magistrate can be enforced on non-payment. Hence it follows, from the above observations, that our fines, by means of which many of our principal branches of revenue are protected against fraud, cannot be enforced by magistrates at the presidencies at all. According to the practice in the mofussil, they would be enforced there by imprisonment; but if the fine exceeded 200 rupees, doubts would probably arise in the mofussil as to the enforcement of the fine; and if the jurisdiction of the mofussil magistrate should come under the review of the King's Court, on the occasion of fining a European, or otherwise, it may be doubted whether the jurisdiction exercised by the mofussil magistrates in cases where a fine is imposable by a magistrate, but where the offence is not, in the understanding of English lawyers, a crime or misdemeanor, could be supported.

It is remarkable that public attention has not been excited to the circumstance that so many of the Acts passed since 1834 extend the provisions of the 53 Geo. 3, ch. 155, by subjecting European British subjects to the cognizance of, and probably to imprisonment by, mofussil magistrates; the amount of fine and period of imprisonment being often unlimited. It is not, however, improbable, that owing to the Acts in question not having been framed with express reference to the general powers exercised by the mofussil magistrates, the result is likely to be a total impunity to European offenders in the interior.

The practice so prevalent in Acts passed since 1834, of leaving the amount of fine, and even of imprisonment, altogether discretionary with a single magistrate, is contrary to the spirit of the English statutes, and of the mofussil regulations; it is leaving too much discretion in the hands of the magistrates, and will produce sentences by different magistrates, standing in strong contrast with each other. It is a discretion to which the magistrates themselves object. The offender being expressly punishable before a magistrate, I should think that the magistrate could not commit the case to the sessions judge, though the fine exceeded 200 rupees.

It is desirable, in conformity with the usage in English statutes, to provide for taking examinations upon oath or summary convictions; this may, perhaps, not be necessary as regards the mofussil, though if an European were to be prosecuted for perjury in the Supreme Court, he would probably argue that the magistrate had no power to administer an oath, except in misdemeanors.

In the Indian Acts, passed since 1834, many serious doubts would arise from the circumstance that sometimes a summary conviction is to take place before a magistrate, sometimes before a justice or magistrate, and sometimes a joint magistrate,

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magistrate, and a person exercising the powers of a magistrate is used; no sufficient reason is traceable in the nature of the offences for the use of these different terms, which occur sometimes in clauses of the same Act.

Though the present Act will provide for the enforcement of many fines which cannot be enforced at present, and will obviate many doubts, yet it is not put forth as a perfect code upon the subject of convictions before magistrates. It does not, as would be desirable in a code, lay down general rules for the enforcement of all fines, but only of those which now cannot be enforced at all, and for future fines. It does not specify with particularity the place of imprisonment; does not provide any forms of conviction, and what is most important, does not provide for appeals. A limit of time also should be fixed for summary convictions. It has not been thought advisable even to anticipate such provisions of the code respecting fines which are contained in the published draft; for those provisions require much consideration, in which we may expect considerable assistance, and the necessity for the present Act, on which the vitality of most of the Acts passed since 1834 seems to depend, is very urgent.

The provisions of the code alluded to are: 1. That the future effects of the offender should be liable, notwithstanding he has suffered the commuted imprisonment. 2. That where the sentence is a fine merely, and not fine and imprisonment, the commuted term of imprisonment should be seven days. 3. A particular scale for commuted imprisonment where the sentence is fine and imprisonment. 4. That for grave offences the fine should be unlimited. On the subject of unlimited fines a very wide difference of opinion exists, even among the few authorities who have hitherto delivered to us their opinions respecting the proposed code. The Law Commissioners, however, restrict their principle as to unlimited fines to grave offences, a principle which will not account for the diversities, in regard to limited and unlimited fines, to be found in the Acts since 1834. It is to be observed, that the Law Commissioners do not advert to the distinction as to whether the fine is to be imposed by one or more magistrates, or by a court; a circumstance which somewhat supports the reasoning of those who contend that the criminal code cannot be judged of without having the code of procedure before us. The second section of the proposed Act may be rejected without affecting the rest of the Act. But I think it ought to be continued; for, at present, in contradiction of every Regulation, and every English statute, whether applicable to England, or passed in England with express reference to the powers of magistrates in India, magistrates (nay, even a single magistrate) may fine and imprison Europeans and natives without limit in some of our Acts since 1834; whilst interspersedly in as many others, without any apparent circumstances to account for a change, the fine and imprisonment are limited.

The commuted imprisonment in the present Act is taken from the 9 Geo. 4, c. 74. The limit of the single magistrate's power to fine and imprison is taken from the mofussil Regulations.

(signed) *A. Amos.*

Fort William, Legislative Department, 16 July 1838.

The following draft of a proposed Act was read in Council for the first time on the 16th July 1838.

Act No. —— of 1838.

Cons. 16 July 1838. No. 10.

1. It is hereby enacted, that in all cases of fines, by which offenders are or may be punishable by any court of justice, or by any magistrate, it shall be lawful, in case of non-payment, if no other means for enforcing the payment are or shall be provided, for the court, by order of court, and for the magistrate, by warrant under his hand, to levy the amount of any such fine upon any goods and chattels of the offender which may be found within the jurisdiction of such court or magistrate; and if no such property shall be found within such jurisdiction, then it shall be lawful for every such court, by order of court, and for every such magistrate, by warrant under his hand, to commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labour according to the discretion of such court or magistrate, for any term not exceeding two calendar months, where the amount of the fine, together with the costs, shall not exceed 50 rupees; and for any term not exceeding four calendar months

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months where the amount, with costs, shall not exceed 100 rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount with costs.

2. And it is hereby enacted, that in all cases in which offenders are or may be punishable by any magistrate with fine or imprisonment, or both, and where the extreme amount of the fine or imprisonment is not specified, it shall be lawful for the magistrate to impose any fine not exceeding 200 rupees, and to imprison the offender for any term not exceeding six months.

3. And it is hereby enacted, that in all cases in which offenders are or may be punishable by fine before a magistrate, it shall be lawful for the magistrate and he is hereby required to receive proof of the commission of the offence upon oath or solemn affirmation.

4. And it is hereby enacted, that the terms "fine" and "fines" in this Act shall extend to all "penalties" and "forfeitures," and the term "magistrate" shall extend to all "joint magistrates," "persons lawfully exercising the powers of a magistrate," and "justices of the peace."

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be re-considered at the first meeting of the Legislative Council after the 16th day of September next.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

(No. 230.)

Legis. Cons. 16 July 1838. No. 11.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative.

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter (No. 1313.), dated the 30th ultimo, with its enclosure, and in reply to forward to you, for the information of the Honourable the Deputy-governor of Bengal, the accompanying printed copy of draft of proposed Act for enforcing fines, which has been read in Council for the first time on this date, and published in the Calcutta Gazette for general information.

I have, &c.
(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

Council Chamber,
16 July 1838.

(No. 439.)

Cons. 16 July 1838. No. 12.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *H. W. Torrens*, Esq. Deputy Secretary to the Government of India with the Governor-general.

Legislative.

Sir,

I am directed by the Honourable the President in Council to forward to you, for the assent of the Right honourable the Governor-general of India, as required by section 70 of the Charter Act, the accompanying printed copy of draft of proposed Act for enforcing fines, which has been read in Council for the first time on this date, and published for general information, together with copies of papers relating to the matter, as noted in the margin *.

I have, &c.
(signed) *T. H. Maddock*,
Offg Secy to the Govt of India.

Fort William, 16 July 1838.

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* Letter from Secretary to the Government of Bengal, dated 27 July 1837, with Enclosure.
Letter to Officiating Secretary to the Indian Law Commission, dated 7 August 1837.
Letter from Officiating Secretary to the Government of Bengal, dated 6 February 1838, with one Enclosure.
Letter from Officiating Secretary to the Indian Law Commissioners, dated 2 March 1838.
Draft of Act, dated 28 May 1838.
Letter to Officiating Secretary to the Government of Bengal, dated 28 May 1838.
Letter from Secretary to the Government of Bengal, dated 30 June 1838, with Enclosures.
Minute by the Hon. A. Amos, esq., dated 16 July 1838.
Letter to Secretary to the Government of Bengal, dated 16 July 1838.

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(No. 1932 of 1838.—Judicial Department.)

Cons.
1 October 1838.
No. 18.

From *J. P. Willoughby*, Esq. Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, in the Legislative Department.

Sir,

I am directed by the Honourable the Governor in Council to transmit, for the purpose of being laid before the Honourable the President in Council, copy of a letter, dated the 1st instant, from the Assistant Registrar of the Sudder Foujdaree Adawlut, and of its enclosures, stating objections on the part of the judges of that court to the draft of a proposed Act, dated the 16th of July last.

I have, &c.

(signed) *J. P. Willoughby*,
Secretary to Government.

Bombay Castle, 12 September 1838.

Cons.
1 October 1838.
No. 19.

Extract from the Proceedings of Government in the Judicial Department.

From the Assistant Registrar to the Sudder Foujdaree Adawlut.

Sir,

The draft of the proposed Act of Legislative Council, dated the 16th July 1838, appearing to the Court extremely defective, the judges of the Sudder Foujdaree Adawlut have minuted their several objections to it, and have directed me to submit them for the consideration of the Honourable the Governor in Council.

I have, &c.

(signed) *J. W. Woodcock*,
Assistant Registrar.

Bombay Sudder Foujdaree Adawlut,
1 September 1838.

Minute by the Acting Second Puisne Judge.

Many of the objections urged by the fourth judge to the provisions of an Act dated the 16th July 1838, are well worthy of consideration.

It appears to me, however, that there is no doubt on the mode of distraint of property authorised in satisfaction of a fine, which I conceive to be by summary process at the discretion of the court, although I consider that it would be preferable to add "under the rules prescribed in civil process."

I am humbly of opinion, however, that there are other very serious objections to the provisions of this section; it limits the imprisonment, in commutation of the highest fines imposed by any court of justice, to six months. A man may thus after undergoing a short imprisonment be enabled by this Act to enjoy the fruits of his offence; the amount of sums obtained by forgery, peculation, fraud, &c., may thus enable him and his family to revel in their ill-gotten wealth.

I agree with the fourth judge that it would be far more desirable to adopt the provisions of the new code, than, by introducing others now for a short period, add to the evils of so often changing the law.

Section the second of the proposed Act, as the fourth judge justly observes, modifies almost the whole of the criminal Regulations for magistrates; it reduces the extent of their jurisdiction in regard to imprisonment one-half, without any allusion to the law hitherto in force; it controls their power to fine to a very trifling amount, and which I conceive particularly objectionable, fines being one of the best punishments for many crimes, more especially for those resulting from cupidity, in order that ill-gotten wealth may thus be disgorged.

Were this Act made only applicable to the provisions of the Acts passed by the government of India, it would not be so open to objection; and in regard to the powers conferred on magistrates by many of these Acts, I should say would be

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be disadvantageous; I would therefore suggest, that in section 1, it be inserted after the words "in all cases of fines," "provided for in the Acts passed by the government of India."

By this the increased power given to magistrates by some of the Acts of the government of India would be controlled; by this the Bombay Code would remain unaltered, until, by the introduction of the new code, one general change would supersede all former laws.

(signed) *G. Giberne.*

MINUTE by the Acting Third Puisne Judge.

IT appears to me, with reference to the Act of 16th July 1838, desirable to distinguish, whether it is solely applicable to magistrates and justices of the peace, which the general tenor of it leads me to suppose, or whether in all cases of fines, by which offenders are or may be punishable by "any court of justice," it embraces sessions courts. In the event of the enactment extending to the latter court, the provisions of clause 1 are so entirely destructive to the law of fines provided in our Regulations, by making the highest term of commutation six calendar months, as to render a reconsideration of the measure proposed by the Legislative Council highly advisable. On the assumption that the Act has reference to magistrates (though I concur with the fourth judge in giving a preference to the principles on which the imposition of fines is regulated in the new code), I am not prepared to object to the terms of commutation laid down in clause 1, which proportions imprisonment.

It does not appear to me that the object of clause 1 is to curtail the magistrates' power of punishment but simply to provide, that if fine form any portion of it, the maximum term of commutation shall not exceed six calendar months; and this view is, I think, strengthened by the enactment which occurs in the following clause, viz. where the extreme amount of the fine or imprisonment is not specified, it shall be lawful for the magistrate to impose any fine not exceeding 200 rupees, and to imprison the offender for any term not exceeding six months; a provision which, as regards the fine, would circumscribe fines in every instance, as our code leaves the amount discretionary, but as regards imprisonment, would be inoperative, as the maximum is in every instance defined.

I am of opinion, therefore, that clause 2 might with advantage be expunged.

Clause 3 appears superfluous as regards our Regulations.

With reference to the distraint of property, it is intended, I apprehend, to be by summary process, conducted after the manner laid down in Section 37, Clause 2, Regulation XII. 1827, though I fully concur with the fourth judge in opinion that the mode of procedure should be defined, and that the objection raised by him, exists to the magistrates executing the distress.

With reference to the 4th clause, I would with deference submit the following remarks.

It is enacted in clause 1, "if no other means for enforcing the payment are or shall be provided, the fine shall be levied upon any goods or chattels of the offender, and if no such property shall be found, then the subsequent provisions of the clause shall be enforced."

In the seizure of opium, means are provided for enforcing the penalty, forfeiture or fine, by confiscating it property, being thus found, there is no occasion to commit the offender to prison for default; and since any amount of fine may be imposed by clause 1, any amount of opium, I apprehend, may be confiscated, and its value realized.

Any fine imposed for the concealment of smuggled opium, if not realized, would of course be commutable into six months instead of one year's imprisonment, by Section 7, Regulation XXI. 1827. The clause as it stands, unless clause 2 is rescinded, is calculated, as Mr. Greenhill has observed, to perplex and lead to confusion; and the Act throughout is, with reference to our Regulations, somewhat obscure.

(signed) *J. Pyne.*

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MINUTE by the Fourth Puisne Judge.

MY attention, in reading the draft of an Act, dated 16th July, has been attracted to some defects that appear to me to exist in it.

The first clause authorizes the distraint of property by a magistrate in satisfaction of a fine, and it afterwards alludes to costs; but it is not provided in what manner the distraint is to be made, whether in the mode provided for by the Civil Code for the sale of property in execution of a decree, or at the discretion of a magistrate, or how. Few cases would occur in which some counter claim would not be brought forward, unless it were attended with risk; and if yielded to, the new law would be all but nugatory; but it would be most objectionable, and make the magistrate dependent in all such cases. It would not be advisable to leave it to the discretion of the magistrate, as it might lead to much injustice, by the summary procedure which would in all likelihood be resorted to. Costs are adverted to, but it is not shown how and what costs are leviable. This seems to be requisite, no costs being recognized by the Bombay Criminal Code.

The proportionate imprisonment of this clause does not appear to me to be so good as the rules of the new penal code (*see* chapter 2), the principles of which are, I think, sounder, and which I would adopt in preference, both for that reason, and that the public may not be distracted by perpetual changes of the law. The last indeed occurs to me as a great objection to this Act altogether, the necessity of which is not made known.

Clause 2 amends almost the whole criminal Regulations for magistrates in the Bombay Code, which impose no limit to fines, whilst this contracts their powers to rupees 200; and rather than being expressive of a great alteration in any existing law, it reads as if it were conferring a new power. I would suggest that the clause, if it be passed into a law, should be expressed differently, and that the following would be an improvement:—

"And it is hereby enacted, that in all cases in which offenders are or may be punishable by fine or imprisonment, or both, and where the extreme amount of fine or imprisonment is not specified, it shall not be lawful for a magistrate to impose a fine exceeding rupees 200, or to imprison the offender for a period exceeding six months, anything in any Act of Parliament or Regulation of any presidency notwithstanding."

The 4th clause alludes to fines and forfeitures, and without some explanation, the drift of this is not quite apparent. The term fine by itself is evident, but when it is made to include "all penalties and forfeitures," it is perplexed. Opium is "forfeited" under certain rules, and by this Act only 200 rupees of a seizure of a lak's value could be confiscated; the magistrate being the authority who confiscates.

The term magistrate extending to justices of the peace, would seem to include "justice of the peace courts, and justices within the immediate jurisdiction of Her Majesty's Supreme Courts;" whereas I suppose it is intended to apply to justice of the peace acting singly, and beyond that jurisdiction.

At present, assistant magistrates have higher powers than this Act would give to magistrates in many cases, and as the different grades to whom the term is meant to apply are specified, "assistant magistrates" should probably be introduced.

16 August. (signed) *D. Greenhill.*

(True copies.)
(signed) *J. P. Willoughby,*
Secretary to Government.

(No. 755.)

Cons. 1 October 1838, No. 20.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *J. P. Willoughby*, Esq. Secretary to the Government of Bombay.

Sir,

Legislative.

THE President in Council has perused with attention the minutes of the judges of the Bombay Sudder Court, which accompanied your letter of the 12th ultimo, No. 1932. In conformity with the opinions expressed in those minutes, he

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he is unwilling on the present occasion to repeal or modify any of the Regulations of Bombay.

2. In order to avoid interference with the Bombay Regulations, and to obviate the objections which have been urged, the President in Council is desirous that the attention of the judges may again be drawn to the draft of Act, and their opinions be requested with reference to the following points.

3. It is objected by the judges that the Act "limits the imprisonment, in commutation of the highest fines imposed by any court of justice, to six months," and the instances of fines for forgery, peculation, and fraud are adduced. Again, a doubt is expressed as to whether the first section of the Act embraces courts of sessions. If, however, the courts of sessions and courts of justice punishing forgery and the like offences with fine, have, within the Bombay Presidency, at present any lawful means whatsoever of enforcing their fines, which can scarcely be doubted, the President in Council is at a loss to conceive how the Act can be thought to apply to such cases; its operation being expressly limited to cases in which "no means for enforcing payment are provided by law."

4. If the judges of the Sudder Court should be of opinion that the magistrates cannot apply the ordinary powers with which they are invested by the Bombay Regulations for enforcing payment of fines to the enforcing payment of the fines which have been imposed by the Acts of the Supreme Government, it will be very important that the President in Council should be made acquainted with such opinion: for, in that case, the Act would apply to the Bombay magistrates acting under the Regulations of the Bombay Code, as they would be without means provided by law for enforcing payment of the fines in question. In that view of the case, the doubts expressed by the judges of the Sudder Court on the subject of "distresses" and "costs" might become relevant and material, as some perplexity upon these points might be experienced in the mofussil by magistrates acting under the Regulations which could not occur to justices acting under Anglo-Indian law. The President in Council, however, is disposed to think that magistrates acting under the Bombay Regulations, have already means provided by law for enforcing the fines imposed by the Acts of the Supreme Government, and conjectures that the judges of the Sudder Court are also of that opinion, from the circumstance of their not deeming any immediate legislation necessary; for if all the fines imposed by the Supreme Government were suspended, the necessity for immediate legislation would, it is conceived, be obvious.

5. The principal object of the Act is to provide means for enforcing the payment of the fines, and taking examinations upon oath, where, as in the town of Calcutta, (and it is presumed also, in the town of Bombay) the fines must be enforced by justices who cannot avail themselves of the general power for enforcing fines given by the Regulations, but must proceed according to Anglo-Indian law, by which no general powers for enforcing fines or taking examinations upon oath are conferred. The exigency which requires the Act to be passed without waiting for the code is, that the fines which have been imposed by the Acts of the Supreme Government, and by which the principal branches of revenue are protected, cannot be enforced except in places where the magistrate can avail himself of the general powers contained in the Regulations. It was thought expedient also to take the same opportunity of enabling courts to enforce the payment of fines in some particular cases in which it was suggested that they had not power to enforce their payment. It does not, however, appear that any court of Bombay stands in this predicament in any case whatever; and if so, the Act cannot be construed to interfere in any way with the courts of Bombay.

6. It has been suggested by the judges of the Sudder that the introduction of "penalties" and "forfeitures" creates a perplexity. As to this, it is to be observed that both in Indian and British legislation pecuniary payments, leviable on conviction, have often been called, indiscriminately, fines, penalties, or forfeitures. Such payments have been denominated by all three terms in the Acts of the Supreme Government. It appears to the President in Council that it would be a strained construction of the Act to apply its terms to forfeitures of confiscated goods; especially as where the law confiscates the whole of smuggled property, it is not open to the objection of not being specific. It is hoped, however,

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ever, that by the introduction of the word "pecuniary," all doubt upon this point may be avoided.

7. It appears to the President in Council that considerable doubt may be entertained repecting the propriety of investing "assistant magistrates" generally with the power of exacting the fines imposed by the Acts of the Supreme Government in all cases where no means are provided for enforcing the fines, some of these fines amounting to 1,000 rupees, and in some instances the fine being accompanied with imprisonment, which may extend to two years, with hard labour. Besides which, the assistant magistrate would, it is conceived, never come within the operation of the Act, as his proceedings would be under the Regulations.

8. With respect to the commutations of imprisonment, these are taken exactly from the statute 9 Geo. 4, c. 74. As it appears from the communications transmitted to the Supreme Government, that much difference of opinion exists as to the expediency of the system of commutation proposed by the code, it has been thought by the President in Council advisable, on the present emergency, to adhere to the system which has been sanctioned by the British Parliament, especially as the law, in its operation, will be confined to places where magistrates act, who in their ordinary business are accustomed to administer the commutations of imprisonment prescribed by the 9 Geo. 4, c. 74. And if appears to the President in Council that the period of commutation set down in Article 54 of the Code, viz. seven days of imprisonment without labour, may, probably, on reconsideration, appear inadequate for the enforcement of the various fines, unaccompanied with imprisonment, which have been imposed in the Acts of the Supreme Government, to the amount of 500 and 1,000 rupees.

9. The President in Council conceives that in one respect only would the proposed Act modify the Bombay Regulations, viz. in restricting the unlimited power of fining now belonging to the single magistrate. This modification the President in Council is not disposed to press. It may be observed, however, that the Bombay Regulation in question is opposed to the Regulations of the other presidencies, and to the whole course of English jurisprudence. The Law Commissioners propose to limit the amount of fine "in all cases not very heinous." The amount of fine is limited in most of the Acts of the Supreme Government applicable to Bombay as well as other places, and in the few cases in which the amount has been left indefinite in those Acts, the Calcutta magistrates have applied for more definite rules. It may be noticed also, that whilst the single magistrate is, by the Bombay Regulation, allowed to impose unlimited fines, he cannot imprison for more than two months without labour. The judges of the Sudder Court appear to have been under a misapprehension that the Act proposed a limit to fines imposed by judges, or other fines than those imposed by a magistrate.

I have, &c.
(signed) *T. H. Maddock*,
Off^g Sec^y to the Gov^t of India.

Fort William,
1 October 1838.

(No. 11.)

From *J. P. Grant* Esq. Officiating Secretary to the Government of India, to *J. P. Willoughby*, Esq. Secretary to the Government of Bombay.

Cons.
31 Dec. 1838.
No. 41.

Legislative.

Sir,

I AM directed by the Honourable the President in Council to beg that attention may be called to Mr. Officiating Secretary Maddock's letter to your address, dated the 1st of October last, wherein was requested a further explanation of the objections urged by the judges of the Sudder Court at Bombay to the draft of an Act which was read in Council for the first time on the 16th of July last.

2. An Act of the nature in question is urgently required at Calcutta, and it is presumed at the other presidency towns also, but the enactment is delayed until an answer to the reference abovementioned shall be received.

I have, &c.
(signed) *J. P. Grant*,
Off^g Sec. to the Gov^t of India.

Fort William,
31 December 1838.

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From *W. H. Macnaghten*, Esq. Secretary to the Government of India with the Governor-general, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India.

Cons.
4 February 1839.
No. 2.
Legislative.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 439, dated the 16th ultimo, submitting for the assent of the Right honourable the Governor-general draft of a proposed Act for enforcing fines. A copy of that assent is herewith enclosed, in the usual form, to pass the Act into law.

2. The Governor-general directs me to suggest, at the same time, a slight verbal alteration in the first section of the draft, and that in lieu of the words, "and if no such property shall be found within such jurisdiction" should be substituted "and if property to the amount of such fine shall not be found within such jurisdiction."

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India with the Governor-general.

Simla, 9 August 1838.

Simla, 9 August 1838.

Legislative.

I DO hereby, under sec. 70, 3 & 4 Will. 4, cap. 85, give my assent to the proposed Act for enforcing fines, received from the Honourable the President in Council, in Mr. Officiating Secretary Maddock's letter, No. 439, dated the 16th ultimo.

(signed) *Auckland.*

(A true copy.)

(signed) *W. H. Macnaghten*,
Secretary to the Government of India with the Governor-general.

(No. 48 of 1839.—Judicial Department.)

Cons.
4 February 1839.
No. 3.

From *J. P. Willoughby*, Esq. Secretary to Government, to the Officiating Secretary to the Government of India in the Legislative Department.

Sir,

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 1st of October last, No. 755, and to transmit, for the purpose of being laid before the Honourable the President in Council, the accompanying copy of a letter from the Acting Registrar of the Sudder Adawlut, dated the 17th ultimo, reporting the opinion of the judges of that court on the several points noticed in your letter, with reference to the proposed Act of the 16th of July last.

I have, &c.
(signed) *J. P. Willoughby*,
Secretary to Government.

Bombay Castle, 5 January 1839.

(No. 506 of 1838.)

Cons.
4 February 1839.
No. 4.

From *C. Sims*, Esq. Acting Registrar Sudder Foujdarry Adawlut, to the Secretary to Government, Judicial Department, Bombay.

Sir,

I AM directed by the judges of the Sudder Foujdaree Adawlut to acknowledge the receipt of your letter of the 6th ultimo, with its enclosure, from the officiating Secretary to the Government of India, in the Legislative Department, requesting the conrt's opinion and report upon the points therein referred to, relative to the objections urged by them to the draft of a proposed Act, dated the 16th July last.

In reply, I am instructed to forward, for the purpose of being laid before the Honourable the Governor in Council, the accompanying copies of the Minutes by

by the second, third, and fourth judges of this court, containing their opinion on the points noticed by the Legislative Council.

I have, &c.

Bombay Sudder Foujdarry Adawlut, 17 December 1838.

(signed) *C. Sims*, Acting Registrar.

Minute by the Acting Second Puisne Judge, dated 16th November 1838.

With reference to the first point embraced in the third paragraph, the courts of sessions and courts of justice, which I humbly conceive are synonymous, punishing forgery and the like offences with fine within the Bombay Presidency, have not at present any means of enforcing these fines, except by imprisonment. Fines, as a mode of punishment for criminal offences, are always commutable into imprisonment, not exceeding five years, by sect. 9 of Regulation XIV. of 1827.

In regard to the point discussed in the fourth paragraph, I am of opinion, as before recorded, that the provisions of this draft of an Act would be particularly applicable to the Acts passed by the Government of India.

In the Acts which refer to this presidency, the realization of some of the fines is provided for, as in sect. 32 of Act XVII. of 1837 ; and many of the fines in Act I. of 1838 are commutable to imprisonment; and to ensure their realization, in some cases the refusal of the port clearance is allowed, but in other cases there is no provision made for enforcing the fines; and hence it would be advisable that the Act be made applicable to the Acts passed by the Government of India.

There is a slight error in the remark contained in the latter part of the 9th paragraph : by sect. 13 of Regulation XII. of 1827 the magistrate can only imprison for two months, without labour ; but by Regulation IV. of 1830, the magistrates' jurisdiction is extended to imprisonment, with hard labour, for one year, so that if the Act in question were made applicable, the jurisdiction of the magistrates under the provisions of the Bombay Code, as before stated, would be reduced at once one-half in extent, without reference to the law hitherto in force. I would repeat my recommendation in my former minute, that the Act referred to be made applicable to the Acts passed by the Government of India only.

(signed) *G. Giberne.*

Minute by the Acting Third Puisne Judge.

The principal object of the Act, as explained in paragraph 5, being to provide means for the enforcement of the payment of fines by justices of the peace, who cannot avail themselves of the general power for enforcing fine given by the Regulations, renders the observations offered in my former minute inapplicable with reference to courts of session and magistrates acting under the Regulations, as in no instance can a fine be imposed without a given period of imprisonment in commutation being awarded. As the operation of the Act therefore will, I apprehend, be confined to the cases instanced in paragraph 5 of the letter under reply, and the enforcement of fines sanctioned under the several Acts of the Supreme Government, wherein fines may be the sole penalty ; and as no modification appears to have been contemplated with respect to the existing law of fines, the enactment is not, that I am aware of, open to any objection, save that it is advisable to provide for the manner in which magistrates in the Mofussil, levying fines by distress under Acts passed by the Supreme Government, are to proceed, as our Regulations contain no specific provision on the subject, if we except sect. 37, Regulation XII. 1827, which limits the levy of fines by distraint to one particular offence.

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It may be permitted me to state, in explanation of the misconstruction I was led into, in supposing the Act applied to sessions courts, under the general term "any courts of justice," that it appeared to me the object of the Act was to ensure the payment of the fine from the property of the offender, in every instance where property might be forthcoming, in supercession of commutation by imprisonment, which was only to be resorted to in cases where property could not be found; and though, after a perusal of the 5th para. of the letter from the Officiating Secretary to the Government of India, the misapprehension is exposed, I would with deference submit that the words "it shall be lawful in cases of non-payment, if no other means of enforcing the payment shall be provided, for the courts by order of court, and for the magistrate by warrant under his hand, to levy the amount of any such fine upon any goods and chattels," &c. &c. might without a strained construction be taken to convey the meaning I conceived them to contain, more particularly as, by the new penal code, the system of distraint in all cases of fines is recommended, and as I wrote under an impression that the Act was promulgated in imitation and anticipation of that law.

23 Nov. 1838. (signed) *J. Pyne.*

Minute by the Fourth Puisne Judge, dated 8 December 1838.

Adverting to the observations of the Honourable the President in Council in the third para., I would submit to his Honor, that the Bombay code provides no means for enforcing payment of fines, excepting by imprisonment for a fixed period, it being thus optional with parties to pay the fine or suffer the confinement. In some cases of forfeitures, however, as in that of smuggled opium, tobacco, &c. a way is provided for effecting them. See section 42, Regulation XXI. of 1827.

The Bombay code, as above noticed, only provides generally a determinate punishment in lieu of a fine if not paid, and it is only the new code which contemplates distraint in all cases for its recovery; I do not therefore see a necessity for interfering with it at present.

In respect to the remarks contained in the fifth paragraph of Mr. Maddock's letter, I have only respectfully to submit, that my original observations were confined to the draft Act, as the Bombay code would have been affected by it, and that I did not presume to offer any opinion in regard to its application to Acts of Parliament or Her Majesty's Courts at the Presidency; but I am still humbly of opinion, that, if the Act be passed in its present form, it will materially interfere with the Bombay code, as already explained in my first minute.

I have only further to observe, that if the Act be expressly limited to the presidency, any remarks relating to assistant magistrates would of course be irrelevant, as there are no such authorities recognised under the Acts of Parliament.

(signed) *D. Greenhill.*

(True copies.)

(signed) *C. Sims,*
Acting Registrar.

(True copies.)

(signed) *J. P. Willoughby,*
Secretary to Government.

Minute by the Honourable *A. Amos*, Esq. dated 26 January 1839.

Cons.
4 February 1839.
No. 5.

Although this matter has become somewhat complicated in the course of correspondence, it will admit of easy adjustment.

Without altering the real effect of the Act, it will be made agreeable to the wishes of the Bombay Sudder Judges, if we in terms make it applicable only to the Acts of the Supreme Government.

The

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The Act will also be made more plain if it be confined to proceedings before magistrates, which is the only defect calling for immediate remedy, and also if the reference to costs is taken away, as it is not important, and will perplex magistrates in the Mofussil.

The Act is intended to remedy a defect in the previous Acts of the Supreme Government, in which it generally occurs that no means of levying fines are specified. Now, if in the Mofussil the unregistered Regulation powers of levying fines and examining upon oath can be applied to the Acts of the Supreme Government, the fines in which affect British subjects, and extend far beyond the amount to which the jurisdiction of the Mofussil magistrate ordinarily extends, still at the presidencies justices of the peace, not being armed with the powers in the Regulations, have, by the English law, no general powers to enforce the payment of fines.

Moreover, a special authority is requisite to enable a justice of the peace to examine upon oath.

Again, the unlimited fines in the Acts of the Supreme Government, and the power of imprisoning as for a misdemeanor, require modification, especially as these powers are now vested in a single justice, without any practicable appeal.

I have made an addition to the last clause, in order to remedy a defect in the Acts of the Supreme Government, which sometimes give the power of conviction to a magistrate, and sometimes to a magistrate or justice, thereby unintentionally limiting the operation of the term magistrate when it stands alone.

A few words respecting the Bombay correspondence. The judges did not advert to the words in the Act, "if no other means for enforcing the payment are or shall be provided." These words exempt all the Bombay Regulations from the operation of the Act, and are an answer to their apprehensions and complaints. This was pointed out to the judges in our answer to their remonstrance. In their reply, they appear to be all, more or less, struck with this, to them, totally new view of the Act; but their endeavour to preserve consistency with their first letter leads them into singular confusion and contradictions which it is not necessary to pursue, as the words which I have introduced into the Act will, I think, perfectly satisfy them.

The judges have not answered the point on which we consulted them, viz. a Mofussil magistrate, not being a justice, imposed under the authority of the new Act, on a British subject, a fine of 2,000 (two thousand) rupees. Can the Mofussil magistrate legally make use of the Mofussil Regulations for the purpose of enforcing payment of the fine? The second judge shows that he does not comprehend the point, for he says that the realization of fines is provided for by section 32 of Act XVII. of 1837, notwithstanding great pains were taken to explain to the judges, that there were no general powers for enforcing fines by the English law. If the answer be in the affirmative, the Act will not affect the Regulation powers; if in the negative, I do not see why the magistrate should not use the power of distress given by the Act, without more specific directions.

(signed) *A. Amos.*

ACT No. II. of 1839.

Passed by the Honourable the President of the Council of India in Council, on the 4th February 1839.

Cons. 4 February 1839. No. 6.

I. It is hereby enacted, that in all cases of fines by which offenders are or may be punishable by any magistrate, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the Governor-general of India in Council, it shall be lawful, in case of nonpayment, if no other means for enforcing the payment are or shall be provided by such Act or otherwise, for the magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender which may be found within

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within the jurisdiction of such magistrate, and if no such property shall be found within such jurisdiction, then it shall be lawful for every such magistrate by warrant under his hand, to commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of such magistrate, for any term not exceeding two calendar months, where the amount of the fine shall not exceed 50 rupees, and for any term not exceeding four calendar months, where the amount shall not exceed 100 rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount.

II. And it is hereby enacted, that in all cases in which offenders are or may be punishable by any magistrate with fine or imprisonment, or both, according to the provisions of any Act heretofore passed or which shall hereafter be passed by the Governor-general of India in Council, and where the extreme amount of the fine or imprisonment is not specified, it shall not be lawful for the magistrate to impose any fine exceeding 200 rupees, or to imprison the offender for any term exceeding six months.

III. And it is hereby enacted, that in all cases in which offenders are or may be punishable by fine before a magistrate, according to the provisions of any Act heretofore passed or which hereafter shall be passed by the Governor-general of India in Council, it shall be lawful for the magistrate, and he is hereby required to receive proof of the commission of the offence upon oath, or upon solemn affirmation in cases where a solemn affirmation is receivable by law instead of an oath.

IV. And it is hereby declared and enacted, that in this Act and in all Acts heretofore passed by the Governor-general of India in Council, the terms "fine" and "fines" shall extend to all "penalties" and "forfeitures," and the term "magistrate" shall extend to all "joint magistrates," "persons lawfully exercising the powers of a magistrate," and "justices of the peace."

(No. 369, of 1839—Judicial Department.)

Cons.
25 February 1839.
No. 26.

From *J. P. Willoughby*, Esq. Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, in the Legislative Department, dated Bombay Castle, 5 February 1839.

Sir,

In acknowledging the receipt of your letter, dated the 31st December last, No. 11, calling attention to Mr. Officiating Secretary Maddock's communication of the 1st October last, wherein a further explanation in respect to the objections urged by the judges of the Sudder Adawlut at this presidency to the draft Act therein alluded to was requested, I am directed by the Honourable the Governor in Council to refer you to my letter dated the 5th ultimo, No. 48, furnishing the information required by the Government of India on the above subject.

I have, &c.

(signed) *J. P. Willoughby*,
Secretary to the Government.

—(A.) No. V.—

No. V.
Powers of a Master over his Slave.

POWERS OF A MASTER OVER HIS SLAVE.

(No. 182.)

From Law Commissioners to the Honourable the President of the Council of India, in Council, dated the 1st February 1839.

Consultations.
11 Feb. 1839.
No. 14.

Hon. Sir,

We have now the honour to report our opinion upon the question referred to us in Mr. Secretary Grant's letter of the 7th ultimo.

2. That question arises out of a recommendation made by the Law Commission in Note (B.) to the Penal Code, the provisions of the code being framed in accordance with the recommendation, which is, "that no act falling under the definition of an offence should be exempted from punishment because it is committed by a master against a slave."

The Honourable Court of Directors observe, in their despatch in the Legislative Department, dated 26th September 1838 (No. 15), of which an extract accompanied the above-mentioned letter of Mr. Grant to our secretary, that this recommendation has their entire concurrence, and they direct that Government will lose no time in passing an enactment to the effect of the recommendation.

The Right honourable the Governor-general is stated, in a letter from the officiating secretary to the government of India with the Governor-general, dated the 18th December 1838, an extract of which also accompanied Mr. Grant's letter, to be impressed with the belief that "this principle (the principle of the recommendation) has been invariably acknowledged and acted up to in all courts of justice in Bengal, such being the result of a minute inquiry entered into by the Sudder Dewanny Adawlut of the lower provinces within the last four years."

"A similar equitable principle," it is added, "is believed to have been generally adhered to in the north-west provinces, in the very few instances in which persons have appeared before a criminal tribunal in the character of master and slave, the spirit of the Regulations of government requiring that all parties should be dealt with in our courts of justice on a footing of perfect equality."

The secretary with the Governor-general then proceeds to remark, "that it will remain for the Honourable the President in Council to determine whether, after a consideration of the question, reason might not be shown for deferring the immediate enactment of a law which there might be some doubt for considering specially requisite with reference to the limited prevalence of slavery in the Bengal presidency, the very mild character in which it exists, and the established principle in our courts of refusing to recognise any distinction of persons in respect of criminal proceedings."

"His Lordship has directed me in this letter," the secretary with the Governor-general continues, "more especially to refer to the presidency of Bengal; but although he is less accurately informed of the law and practice in the other presidencies, he is led to believe that the same principle of general protection is also extended to them; but he would wish on this head to have further information."

The question referred to us by Mr. Secretary Grant's letter, which encloses the documents we have cited, is, "whether the law, as now actually in force over every part of British India, is or is not such as to make the passing of a law of the nature directed by the Honourable Court requisite, in order that the intention of the home Government may be carried into complete effect."

To this question we must answer, that we think the passing of a law of the nature directed by the Honourable Court is requisite, in order that the intention of the home Government may be carried into complete effect.

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Our reasons for thus answering are as follows: First, if we take our notion of the law now in force from the statements of the various judicial functionaries as to the course they would pursue, or would expect their subordinates to pursue under supposed circumstances, then the law in some parts of British India is already in conformity with the intentions of the home Government; in other parts it is not; and in other parts it is in such a state that no one can say with certainty whether it is or is not in conformity with those intentions. It will be observed, of course, that law depending upon the opinions of functionaries is liable to be changed by a change of functionaries.

It is in the last-mentioned state that we conceive the law to be in the lower provinces subject to this presidency. We speak with the utmost deference to the Right honourable the Governor-general, but his Lordship was writing only from recollection of documents which we have before us. We say this upon the presumption, that the minute inquiry which his Lordship alludes to as having been entered into by the Sudder Dewanny Adawlut for the lower provinces within the last four years, was that inquiry which was instituted for the purpose of enabling the court to reply to certain questions addressed to them on the subject by the Law Commission, and the result of which, combined with the result of similar inquiries instituted by the courts of Sudder and Foujdaree Adawlut at Madras and Bombay, formed the basis of that recommendation of the Law Commissioners which induced the Honourable Court of Directors to issue the instruction now under discussion.

The uncertain state of the law, as collected from the answers of the judicial functionaries, is set forth in Note (B.) to the Penal Code. But in consequence of the doubts expressed by the Right honourable the Governor-general as to the opinions of the functionaries of the lower provinces, it will be right to cite more largely from those authorities.

Mr. C. R. Martin, the officiating judge of the 24 Pergunnahs, says, "The authority of the master over his slave is quite absolute according to the Mahomedan law, and protection cannot legally be extended to the latter in case of cruelty or hard usage; but notwithstanding the law at the present time is so much on the side of the master, it is an acknowledged power of the courts to award penalties on the master if he do not feed and clothe his slaves well, do not allow them to marry, and punish them without cause."

Mr. J. R. Ewart, the officiating magistrate of the southern division of Cuttack, says, "A master, whether Hindoo or Mussulman, is considered to have a right to his slave's labour, and to apply summarily such moderate correction as is necessary. If it is proved that a master has exceeded that limit, he is liable to punishment."

Mr. C. Harding, the commissioner of circuit of the 12th division, says, "Complaints between master and slave are of such rare occurrence, and the practice of courts so different, according to circumstances, that it is impossible to reply to this question satisfactorily. If a master, without due provocation, seriously maltreated his slave, he would probably be fined and admonished. If he moderately chastised him for imprudence, disobedience, or neglect of duty, he would be considered justified in so doing."

Mr. W. Dampier, the commissioner of the 16th division, says, "A magistrate is, I consider, authorized to interfere in cases of cruelty or severe maltreatment only; but as no law is laid down, the practice of affording the assistance varies much, some officers entirely separating the slave and master, whilst others deem it sufficient to take security for the future good conduct of the master."

Mr. R. H. Mytton, the magistrate of Sylhet, says, "The criminal courts do not interfere between master and slave, except for ill-treatment, or any act which may militate against nature. In the former case, moderate corrections of a slave by his master would not be considered as a misdemeanor."

These citations show that the judicial functionaries of the lower provinces are far from unanimous in denying the right of correction to the master, though it is true that about half those who have given any opinion say they should make no difference between the treatment of a slave and a freeman.

The court of Nizamut Adawlut, however, which presides over and regulates the proceedings of all these functionaries, had expressed a different opinion. In the letter written by the registrar of the court, in answer to the inquiries of the Sudder Court, it is said, "A master would not be punished, the court opine, for inflicting

inflicting a slight correction on his legal slave, such as a teacher would be justified in inflicting on a scholar, or a father on his child."

In the upper provinces, as the Nizamut Adawlut, summing up the opinions given by their subordinates, state, without expression of dissent on their own part, that no distinction is recognised between the slave and the freeman in criminal matters, with some few exceptions, it may be said that the law is already in conformity with the intentions of the home Government; still understanding by the word law, the course which the judicial functionaries say they would pursue.

With respect to the presidencies of Madras and Bombay, the Right honourable the Governor-general expresses a wish for further information. Upon this we beg to remark that the Law Commission, when it made the recommendation contained in Note (B.) to the Penal Code, had collected from those presidencies a body of information precisely similar to that which it had collected from Bengal. The result is shortly stated in that note, and need not be here repeated. Of neither of those presidencies can it be said that the law is throughout every part of them already in conformity with the intentions of the home Government. Note (A).

Secondly. We have been speaking hitherto of the law as collected from the statements of the various judicial functionaries as to the course they would pursue, or would expect their subordinates to pursue, under supposed circumstances. But it must be remembered that a law so collected is one which the people have no means of knowing with any reasonable approach to certainty. This is in itself sufficiently evident; but a striking light is thrown upon it by comparing the answer of the officiating magistrate of South Cuttack, already cited, which recognises the right of moderate correction in the master, with the answer of the neighbouring functionary, Mr. Mills, the officiating magistrate of Central Cuttack. The latter states that the practice which he finds has been adopted by every officer that has presided in his court, "is to punish the master and manumit any slave who prefers a complaint against him for cruelly hard usage, or has any other reason for wishing to leave him. It does not signify," he says, "whether the ill-treatment of the master, or alleged cause of dissatisfaction on the part of the slave, is substantiated or not; every magistrate has passed an order on all such cases to the following purport: 'We do not recognise slavery; you may go where you please, and if your master lays violent hands on you, he shall be punished.'" And not only does Mr. Mills state this as the uniform practice of his own court, but he also thinks he may with safety assert, "that the magistrates of Bengal never recognise the masters to have a legal right over their slaves with regard to their person."

But it is further to be observed, that not only have the people no means of knowing with any reasonable approach to certainty the law which would in general be administered to them, but the sources of information on the subject which are open to them would probably tend to mislead them. Those sources are the Mahomedan law, the Hindoo law, and the Regulations.

The substance of the Mahomedan and Hindoo laws on this subject may be shortly stated in the words of the muftees and pundits of the Sudder Dewanny Adawlut of Calcutta. In the year 1808, that court, with a view to ascertain whether any modification of the Mahomedan or Hindoo laws of slavery appear requisite or expedient, "resolved that certain questions should be put to the muftees and pundits of the court."

The third of those questions was, What offences upon the persons of slaves, and particularly of female slaves, committed by their owners or by others, are legally punishable, and in what manner? Slavery in India, p. 303.

The answer of the muftees was, "It is unlawful for a master to punish his male or female slaves for disrespectful conduct, and such like offences, further than by tadeeb (correction or chastisement), as the power of passing sentences by tazeer and kisas is solely vested in the hakim. If, therefore, the master should exceed the limits of his power of chastisement above stated, he is liable to tazeer," &c.

The answer * of the pundits was, "In cases of disobedience or fault committed by

* This answer was made to the second question of the court, but is referred to in the answer to the third.

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by the slave, the master has power to beat his slave with a thin stick, or to bind him with a rope; and if he should consider the slave deserving of severe punishment, he may pull* his hair, or expose him upon an ass."

It may be observed, with regard to Mahomedan law, that as they only are slaves by that law who are captured in an infidel territory in time of war, or who are the descendants of such captives, the status of slavery contemplated by that law can hardly be said to have any existence in this country. But, on the other hand, those parts of the Regulations of the Bengal Code, adopted afterwards into the Madras Code, which provide that a master who has murdered his slave shall not screen himself under the technical objection derived from the principle of kisas or retaliation, are legislative recognitions, not only of the criminal branch of Mahomedan law, but also of the existence of a status of slavery capable of intercepting the general principles belonging to that branch.

At Madras, too, the Mahomedan law as to the master's right of punishing, received so late as 1820 the confirmation of a circular order of the Court of Foujdaree Adawlut, which has never been revoked, though it is said by the judges of that court, in their answer to the Law Commission, not to be recognised in practice. It is however recognised so late as 1823, in a general report to the Governor in Council by the Foujdaree Adawlut.

Slavery in India, p. 926.

With regard to Hindoo slavery, it may be said that the question under discussion is one belonging to the criminal branch of the law, and that the criminal branch of Hindoo law has been superseded by the Mahomedan; but this, we apprehend, is not a strictly correct view of the matter. We do not think this question belongs to the criminal branch of the existing law, but to the law of persons or of status. We think that when the Mahomedan conquerors introduced their own criminal law, and left to the Hindoos their own law of persons or of status, they left to them that exception or defence against criminal charges which arises out of the Hindoo status of slavery. This doctrine may be illustrated by the more palpable case of the exception or defence arising out of the law of marriage. There can be no doubt, we think, that a Mahomedan judge would hold a Hindoo exempt from punishment for restraint upon the person of a woman who was his wife by Hindoo law, though he might have more than the four wives permitted by the Mahomedan law of marriage, and have been united to them in a manner which that law does not recognise.

The magistrate of Agra, whose answers evince much reflection and research, adverts to this view of the subject. But he is of opinion that the Mahomedans did interfere to a certain extent with the Hindoo status of slavery, and he cites from the Ayneen Akbaree, vol. 1, p. 302, the following passage, where Akbar, giving instructions for the guidance of the police, says, "He must not allow private people to confine the person of any one, nor admit of people being sold as slaves. He shall not allow a woman to be burnt contrary to her inclination." But supposing Mr. Mansel to be right on the historical question, it still does not follow that the British Government of India, in adopting the Mahomedan criminal law, adopted also the Mahomedan modifications of the Hindoo law of status. Mr. Mansel says, with reference to this doctrine, "The criminal law, as administered under Regulation VI. & VII. of 1803, is undefined and anomalous to a degree which renders it necessary to the student to fall back upon first principles, and the magistrate, among conflicting analogies, must select that which is most consonant to natural justice." We are far from thinking that this is any unreasonable stretch of judicial discretion in favour of personal liberty; but we are now considering the subject, not with a view to the judicial decision of a particular case, but to that systematic legislation for which the Law Commission was created. Mr. Mansel very properly confines his doctrine to such parts of British India as have been under Mahomedan sway. With regard to the remainder, into which Mahomedan law has been no otherwise introduced than by our Regulations, there can be no ground for thinking that the Hindoo law of status has been altered.

It is to be noted also, that by the construction of the Sudder Dewanny Adawlut of 1798, confirmed by the Governor-general in Council, on the 12th of April

* More correctly shave.

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April of that year, and fully recognised in the subsequent Resolution of the Honourable the Vice-president in Council, dated 9th September 1827, the spirit of the rule contained in Section 15, Regulation IV. of 1793, for observing the Mahomedan and Hindoo laws in suits regarding succession, inheritance, marriage and caste, and all religious usages and institutions, was determined to be applicable to cases of slavery. It is true that the rule and the construction have direct reference only to civil proceedings; but they must, we apprehend, operate indirectly in criminal proceedings, by obliging the criminal courts to admit those exceptions or defences which arise out of the civil rights thus confirmed. We may employ again the illustration of marriage above adduced: we cannot doubt that under the rule a criminal court would hold a Hindoo justified in exercising such restraint towards his wives as would amount to false imprisonment if exercised towards other women; and if that be so, the same court ought certainly to deal in the same way under the construction, with the exception or defence arising out of slavery.

The Regulations, the last-mentioned source of law accessible to the people, are silent on the point in question.

Silence of the Regulations.

Some of the judicial authorities indeed, and in particular those of the north-west provinces, consider this silence of the Regulations as involving a negation of the power in question.

The collective opinion of these authorities is thus summed up by the Sudder Dewanny Adawlut.

Although the Mahomedan law permits the master to correct his slave with moderation, the code by which the magistrates and other criminal authorities are required to regulate their proceedings does not recognise any such power; and as the Regulations of government draw no distinction between the slave and freemen in criminal matters, but place them on a level, it is the practice of the courts, following the principles of equal justice, to treat them both alike, affording them equal protection and equal redress whenever they come before them, and whether they stand in the relation of master and slave to each other or not.

This inference, from the silence of the Regulations, would be a just one if the Regulations professed to be a complete code. But this is not the case; they profess to be merely a supplement and corrective of Mahomedan and Hindoo law. We think, therefore, that it would be very unsafe to infer that any provision of those two systems was repealed by the mere omission to notice it in the Regulations.

We think, therefore, we are justified in saying that the sources of information which are open to the people would probably tend to mislead them; and if this is the case, an express enactment or declaration by the Legislature seems highly desirable. It would be very hard upon a master who had given his slave moderate correction, in the supposed exercise of a legal right, to be brought into a court of justice as a criminal, and subjected to punishment.

How far the people are actually misled it would be difficult to estimate. From some instances which have come to our knowledge, it would seem that the people feel it is not safe to trust to the three sources of law above mentioned; that they do conjecture as well as they can, frequently indeed overshooting the mark, what course the criminal courts will adopt. But whether the above-mentioned sources of information do really mislead the people, or whether they do not mislead, because they are known to be unsafe guides, a law distinctly declaring that the legal right of moderate correction does or does not exist, is the remedy indicated by either state of things.

The question, which of these two doctrines is it most expedient to promulgate as law, is not submitted to us by the present reference, and some of us do not feel prepared to express, at this stage of the inquiry into slavery, any opinion upon that point; we therefore submit the draft, without further remark, of an Act for carrying into effect the views of the Honourable the Court of Directors, founded upon the recommendation contained in Note (B.) to the Penal Code.

We have inserted in an Appendix the evidence which we have taken since the general subject of slavery was submitted to us on the 5th Novmber last. The evidence which has been heretofore collected on this subject has been principally that of European judicial functionaries, and describes little more than what takes place in courts of justice. In the evidence now submitted will be found some information respecting the domestic condition of the slaves.

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We have also placed in the Appendix a compilation from the original authorities relating to slavery made by our secretary, Mr. J. C. C. Sutherland.

We submit this our Report for the consideration of your Honor in Council.

We have, &c.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Elliott.
J. Young.

I have sent up a separate Minute, stating my opinion respecting the expediency of the proposed law.

(signed) *C. H. Cameron.*

It is hereby declared and enacted, that whoever assaults, imprisons, or inflicts any bodily hurt upon any person being a slave, under circumstances which would not have justified such assaulting, imprisoning, or inflicting bodily hurt upon such person if such person had not been a slave, is liable to be punished by all courts of criminal jurisdiction within the territories subject to the government of the East India Company as he would be liable to be punished by such courts if such person had not been a slave.

Consultations. 11 Feb. 1839. No. 15. Enclosure.

Hindoo Slavery.

In the technical language of Hindoo law, the susrushaka or person owing service (susrusha), is five-fold: The pupil (sishya), the apprentice (antevasi), the hireling (brilaka), the overseer (adhikarmakut), and the slave (dasa). Breach of obedience due is one of the 18 titles of law. The four first are denominated servants (kurmakara), and are liable to pure work.

Narada, Digest, b. 3, c. 1, v. 3.

Idem, v. 26.

Idem, v. 29.

2. There are 15 descriptions of slaves enumerated by Narada, who are said to be liable to impure work: The house-born (grihujatu), one born in the house of a female slave; the bought (krila), the obtained (labda), the inherited (dayadupugatu), the self sold, the captive in war, the apostate from religious mendicity or asceticism, the maintained in a famine (aukala britta), the pledged by his owner, the slave for a debt, who submits to slavery for discharge from debt, the won in a stake (panejitu), one who is overcome in a contest, who had agreed to submit to slavery in that event, the self offered, with the words, "I am thine," the constituted (kirtu), for a stipulated time the slave of his food (bhakta das), the slave for his bride (baduva krita).

3. The labdha or obtained slave is described in the Mitakshara as obtained by acceptance and the like. Mr. Colebrook has rendered the term "received by donation;" the author of the Digest in his comment says, "by acceptance of donation and the like." If not included in this denomination, the female slave acquired by her marriage to a man's slave, is a 16th class: according to a test of Katyayana and its comment in the Vevâda Chintamam, she may be either a free woman or a slave of another, if he had assented to her marriage. Another instance which may perhaps be included in the labdha is below noticed (para. 9.)

Dig. b. 3, c. 1, v. 55.

4. The free man in the last eight instances must consent to slavery. The maintained in a famine is described by the author of the Mitakshara as "preserved from death for slavery." The apostate becomes the king's slave if he fail in performing atonement. The author of the Digest says, that the captive in war must also assent to slavery to save his life; but in the Mitakshara this assent is not implied.

Menu, c. 8, v. 415, cited in the Digest, b. 3, c. 1, v. 33.

Menu enumerates seven slaves, the captive, the slave for his food, the bought, the house-born, the given, the paternal, and the penal (dandodas), explained to be one consenting to slavery to discharge a fine, and the like. The author of the Mitakshara says that his enumeration is not exclusive of other description of slaves, which opinion the author of the Digest adopts.

6. Any person bound to obedience, is only bound to render service suitable to his class; according to which also is he to be treated. In the Digest, B. III. c. 1, s. 1, v. 7, the verse of Narada, which implies this position, is not rendered according to the comment and the more obvious sense of the texts, but it is said generally that all slaves are to perform the lowest offices.

7. By

7. By the old law, in the direct order of the class, a Brahmin might have a wife of each of the three classes inferior to himself; a khetrya, one of both of his two inferior classes; and a vaisya a sudra wife. On the same principle servitude is said to be in the direct order of the classes; the superior cannot be the slave of the inferior, but an equal may be of an equal. Dig. b. 3, c. 1, v. 56, 57, 58.

8. But the Brahmin is not liable to slavery. The apostate is stated generally to be the slave of the king in the Mitakshara, which does not cite the text of Katyayana, in which it is said the apostate Brahmin is to be banished. The rule of slavery in the direct order of the classes does not apply to the apostate slave. According to the author of the Digest, a khatriya and vaisya apostate may, if he assent, serve an inferior Hindoo slave. Dig. b. 3, c. 1, v. 30. Dig. b. 3, c. 1, v. 56.

9. In treaties of adoption, an extract imputed to the Kalika Purana, though of doubtful authenticity, is prominently cited. (See translation of the Dattaka Mimansa, sec. IV. § 22, and Mitakshara, on inheritance, c. XI. s. I. § 13.) It has a passage which declares, that adopted sons duly initiated, may be considered as sons, else they are termed slaves. The author of the Digest commenting on the words "bought" and "received" in Narades' description of slaves, observes that they may mean also boys purchased or received for adoption, but who have become slaves through some failure in the form; and he adds, that they become slaves independent of consent; and he is not shaken in his position, though it should be urged that thus a Brahmin might become a slave. Book 3, c. 1; Comment on v. 27.

10. Sir T. Strange, in his Appendix to the 5th cap. of his Hindoo Law, quotes a letter of Mr. Colebrook on Hindoo slavery, generally, in which he discusses the peculiar point just referred to. Mr. Colebrook quotes the elaborate exposition of the author of the Dattaka Mimansa, (sec. IV. § 40, 41. 46), which is, in effect, that the informally adopted falls to the condition of a slave if the adoption fail from three causes; 1, excess of age; 2, rites omitted; 3, impossible from their prior performance. Mr. Colebrook does not treat the construction of the author of the Digest with much respect, and adds, that but for the commentary of the author of the Duttaka Mimansa, he should consider the words in the passage of the Kalika Purana as figurative, and merely intended to declare the adoption void.

11. The author of Mitakshara, in his comment on the labdha or obtained slave, as already noticed, says by acceptance (parigraha), and the like. Parigraha means also adoption; but if he contemplated the case of the informally adopted, he would probably have been more explicit.

12. I think the first impression of Mr. Colebrook, that the passage in the extract imputed to the Kalika Purana is not to be construed literally, is correct; nor does the comment of Nunda Pundit appear to me opposed to this. He merely deduces from the text three predicaments, in which, in an informal adoption, the adopted are said to be "slaves", that is, do not acquire the final relation.

13. The power of moderate chastisement of slaves seems a necessary condition of the relation of master and slave. Menu (cap. VIII. v. 299 & 300) declares that a wife, a son, a slave (dasa), a pupil and a younger brother may be chastised with a rope, a slip of bambu (vence dala); they are to be beaten on the back part of their bodies. The person chastising contrary to his rule incurs the penalty of theft. The commentator, Kulaka Bhutta, says the chastisement is for the sake of "instruction," and that the bambu dala is a light sulaka slip or lath. A text of Katyayana, cited in the Rutnakara is this: Corporal punishment (tadana) "and binding, so also vexation (vidambana). There are the penalties of a slave; pecuniary fine is not ordained." The author of the Rutnakara explains, that by corporal punishment is meant flagellation with a whip and the like. By vexation, tonsure, exposure on an ass, and so forth. Dig. idem, v. 2, half verse omitted. Sir W. Jones has used servant in his translation of this text, so also elsewhere, v. 415, in particular; but Mr. Colebrook here substitutes slave, *vide* Dig. b. 3, c. 1, v. 33.

14. Narada declares that the pupil deserting his master may be corporally punished and confined; and Gotama says, that for ignorance and incapacity he may be corrected "with a small rope or cane." The Rutnakara, commenting on another text of Narada, enjoining the duty of the pupil, says that he is thus declared to be a servant. Dig. idem, v. 19. Idem, v. 12.

15. By another text of law, the mutual litigation between husband and wife, teacher and pupil, father and son, master and servant, is not legal. The author of the Digest remarks that this does not exclude special cases, and that the text implies that the teacher and so forth has the power of correction, and adds that if the pupil or the son violate his duty, and the teacher or father be weak and unable Idem, v. 10.

unable to correct him, it is consistent with common sense that he should then apply to the king.

Dig. b.3, c. 1, v.19. 16. Narada, in his text, has the words badha and bandha (binding); the former might mean death, and the author of the Mitakshara obviates that sense, by declaring that corporal punishment (tadana) is meant on account of the slightness of the fault. It is not important whether the mode of punishment indicated by rope is tying up or stripes. It appears clear that the Hindoo law recognises the power of the master to inflict moderate chastisement on his slave; he is, however, liable to punishment for abuse of that power.

Idem, v. 51, 52. 17. Can a slave own or earn property independent of his master? There are two nearly identical passages of Narada and Menu (cap. VII. 416) on this subject, which declare that a wife, a slave and a son can have no exclusive property, and that their gains belong to their owner. A passage of Katyayana declares the dominion of the master over the slave's goods; but the master has no right to the goods thus acquired by his favour or sale, according to one reading, by public sale, and another reading rejects the negative. The translated passage is as it occurs in the printed copy of the Chintamam, the author of which says, whatever property is obtained by a slave, by the favour of his master and by self-sale, is the slave's property; the master is not entitled to it.

Idem, v. 54.

18. Kullaka Bhuta, commenting on the above text of Menu, says that it is to declare the dependence of the wife and the rest, and he illustrates the case of Stridhun as an instance of property in the wife. The author of the Digest, in his comment on these passages, seems of opinion that the slave may have exclusive property; and in a prior passage he combats the objection that a slave maintained, having no property, cannot repay his food by asserting that he may through affection possess property.

19. As a general position, it appears, however, to me correct to say that the goods and earnings of a slave belong to his master; the exception being that to which the master has assured his ownership, proceeds of a self-sale or anything analogous.

Idem, v. 42. 20. By the preservation of his master's life from imminent danger, a slave is not only emancipated, but entitled to inherit as a son; and if a female slave, who bear her master a son, according to a text of Katyayana, both are entitled to liberty; but according to the explanation of the Prakasa Panijala and other Maithela books, as noticed in the Chintamam and Digest, this must be only considered in the case where the master has no legitimate or adopted son.

Idem, v. 49.

Idem, v. 33. 21. Except by the preservation of his master's life (and his will, and in the case of the female slave by bearing him a son), there is no emancipation of the first five slaves enumerated in para. 2. This is distinctly stated by the author of the Mitakshara, who does not even allude to the text of Gotama, favourable to the female slave in the case premised.

Idem, v. 44. 22. According to the comment of Vijnanesmana on a very obscure text of Yajnya Walkya (which he declares applicable to the apprentice as well as slave), the slave maintained in a famine and the slave for his food are emancipated by relinquishing their support and replacing what they have consumed from the commencement of their slavery; but the words of this text do not suggest this latter position.

Idem, v. 43. 23. Narada says, the first is released by giving a pair of oxen, for what he has consumed in a famine is not discharged by labour; and he adds, that the second is released immediately on relinquishing his food. The author of the Rutnakara holds that the slave fed in a famine obtains his liberty by relinquishment of food and gift of a pair of oxen. In this, the more obvious sense of the text, the author of the Digest concurs, noticing, however, that the author of the Vevâda Chintamam holds, that he must give the oxen in addition to what he had consumed.

24. According to the Chintamam and Digest, the slave for his food is released by relinquishing the same, and this appears the most reasonable doctrine. It does not seem unreasonable that he whose life was saved in famine should make some return besides his labour; but that he should give both a pair of oxen and the value of his support, seems unjust and not intended.

Idem, v. 46. 25. The debtor slave is released by liquidation of his debt, with interest, according to Narada. The comment in the Mitakshara on the obscure text of Yajnya Walkya, already noticed, says, " That the debtor slave is discharged on repaying, with interest, his present creditor what he paid to redeem him from a former

former creditor." This seems the mention of a special instance by way of illustration.

26. The pledged slave reverts, of course, to his master who pledged him, if he redeem him from the mortgagee. This is declared by Narada; but an involved and obscure comment on the above obscure text of Yajnya Walkya, in the Mitakshara, bears this construction, that the pledged slave is released on paying the amount for which his master pledged him, with interest. It, however, hardly can have been meant that an owner pledging his slave at an under-valuation should give the slave the right of redemption at that under-price.

Dig. b. 3, c. 1, v. 45.

Cited in Digest, b. 3, c. 1; comment on v. 46.

27. The slave for his bride, literally, attracted by a female slave, is emancipated by separation, "because (says the author of the Mitakshara) it is prohibited to cohabit with a slave."

28. The slave for a term is, of course, emancipated by the lapse of the period. The captive, the stake-won and the self-offered are emancipated, according to Narada, cited in the Mitakshara, by finding a substitute equally capable of labour; that is, according to the Vevâda Chintamam, "any other slaves." For the apostate the only release is death; he is the slave of the king. Texts of Hindoo law especially provide for the release of those enslaved by force or by fraud of kidnappers; and the interference of the king is required.

Idem, v. 46.

Narada, cited in the Vevâda Chintamam, and Yajnya Walkya, in the Mitakshara.

29. It thus appears, that for the mass of slaves which fall within the first five classes, the law has given little hope of emancipation.

Idem, v. 40, 41.

30. There are two texts, Menu, which, if taken literally, abridge that hope. A Brahmin may compel any sudra, though unbought, to render service of a slave (dasya) to him, for he was created to serve the Brahmin; and even the emancipated is not released from his servile state, which is natural and indelible. (C. 8, v. 413 & 414.)

Dig. b. 3, c. 1, v. 36. 38.

31. The commentator adds, "for spiritual purposes it is necessary that obedience be paid by a sudra to the Brahmin, or other twice-born man. This is what is meant, else the subsequent enumeration of slaves would be nugatory;" that is, if a sudra can never escape from servitude.

32. The author of the Chintamun, commenting on the last of the two texts, states it is meant to express contempt of slaves otherwise purchased; and other causes of slavery would not be pertinent in regard to sudras, nor would they be capable of manumission.

It is mentioned by him as a passage of the Murkundaya Purnu.

33. The author of the Digest has a long and, as usual, unsatisfactory comment on these terrific texts. He denies that the sudra is born a slave to all men, or becomes the slave of any one who takes him, but intimates that the relation of master and slave is indissoluble. Regarding the text, as applicable to the slave licensed, not enfranchised, he supposes the case where such slave undertakes the service of a second master; in that case he belongs to him, and may be coerced to do servile work, without penalty incurred by the second master.

34. In one instance the power of master to sell seems limited. According to a text of Katyayana, cited in the Chintamun, a man not urged by distress, who attempts to sell his female slaves, who is obedient and objects, is to be fined two pavas. The text implies that the sale would be illegal.

Dig. b. 3, c. 1, v. 60.

35. The issue of a slave is a slave. This is implied by the definition of the house-born, and the position that the free woman who marries a slave becomes the slave of her husband's master. If a man, without stipulation to the contrary, allowed his slave-girl to marry a free man, it should follow that she would be released from her master; but if his assent were wanting, his property in her would remain undisturbed, and the offspring, on the general principle of the greater right of the owner of the soil, would be his. This principle is distinctly laid down in Menu, c. 9, v. 48 & 55; but if some of the natives examined by the Law Commission, are accurate, the rule, on defect of stipulation, does not seem always to be the local usage. One witness, a resident of Cuttack, says the local usage is the converse of the legal rule; and others have stated that, in the absence of special agreement, the masters of slaves who have intermarried share the progeny.

36. The eighth of Mr. Macnaghten's Collection of Precedents on Slavery has a construction of Hindoo law resting on reasoning. If *A.* would sell his slave *B.* to *C.* for a fixed price, and by such sale great grievance would be inflicted on *B.*, as, for instance, his removal to a distant country, then in that case, if another purchaser, at the same price, offers, whether designated by *B.* or not, *A.* must sell to such other purchaser. The reason assigned is, that the master would

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would suffer no less. The present pundit of the Sudder Dewanny Adawlut, Vaydeanath Misser, who gave this opinion, has been examined by the Law Commission, and states that it would be considered as oppressive to sell a slave, so as to place him beyond the reach of communication with people of his own class, or to separate families. The courts ought to interfere to prevent such sales. There does not appear to be any legal authorities manifesting such tenderness for the slave; and if the pundit's doctrine is to be taken for law, it must be considered as resting on popular usage and feeling, to which is opposed any oppressive exercise of his power over his slave by a master.

(signed) *J. C. C. Sutherland,*
Secretary.

Calcutta, 1 February 1839.

Consultations. 11 Feb. 1839. No. 16. Enclosure.

MINUTE by the Honourable *C. H. Cameron* on Hindoo Slavery.

It is proper to begin with a short statement of my motives for sending up this separate Minute with our Report.

The Law Commission recommended that in the Penal Code "no act falling under the definition of an offence should be exempted from punishment, because it is committed by a master against a slave."

We are now called upon to say whether the law is not already in conformity with that recommendation in every part of British India, and, if it is not, to prepare a draft of an Act which shall make it so. An opinion upon the expediency of the law is not asked from us; but the expediency of such a special law does not necessarily follow from the expediency of adopting the principle in a general code; and therefore, being called upon for a draft of such a special law, I think we are called upon by our position to express an opinion upon the question of expediency, if we have formed one. We have abstained from doing so in our Report, for the reasons therein mentioned. I have formed an opinion upon this question, and, so far as regards this presidency, an opinion which I think is very unlikely to be shaken by further inquiries; and I therefore take this mode of expressing it.

I shall first consider whether there is any reason to suppose that the proposed law will excite dissatisfaction in any such degree as ought to prevent its enactment.

For this purpose, it is proper to consider what changes in the laws relating to slavery have already been made and acquiesced in.

Regulation X. of 1811 prohibited the importation of slaves from foreign countries.

Whether the prohibition is of importation of slaves generally, or only of importation of slaves for the purpose of being sold, given away, or otherwise disposed of, is difficult to say, when the various high authorities who have held contrary opinions upon the point are considered.

The Honourable Court of Directors, on the 26th April 1820, held that the Regulation prohibited importation generally; the contrary doctrine, however, seems to have been acted upon both before and since.

The Regulation IV. of 1822 prohibits the removal of slaves, for the purpose of traffic, from one province to another within this presidency.

These are the only * two general laws made by the Legislature which interfere with the rights of masters; but there are several cases in which local authorities have legislated with that effect by proclamation, and others in which the people have believed that legislation of that kind had taken place, which are deserving of notice.

Slavery in India, 101, *et seq.*

In the year 1812 Sir C. Metcalfe, then resident at Delhi, issued a proclamation prohibiting absolutely the sale of slaves. The government doubted the expediency of this proclamation in respect of this prohibition (and in another respect also), because the law in the territory of Delhi would thereby become different

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* The two Regulations regarding kisas, cited in our Report for a different purpose, are hardly worth noting with a view to my present purpose.

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different from what it was in the rest of British India. A correspondence ensued, in the course of which Sir C. Metcalfe says, in a letter, dated 3d January 1813, "I do not find that the prohibition of the sale of slaves has occasioned any surprise at this place. It is considered to be merely the extension to this territory of the orders promulgated in other parts of the British dominions; and, from a general misunderstanding of the orders of government issued elsewhere on this subject, it is not known that greater restrictions are in force in this district at the present moment than in any other part of the country. It is desirable, in my humble opinion, that this delusion should not be done away, either here or elsewhere, by a formal sanction for the sale of slaves."

In a letter dated 16th April 1813, Sir C. Metcalfe says, in explanation of the passage just cited, "It was my intention to intimate that the prohibition of the sale within this territory had not occasioned any surprise, it being generally conceived that the same prohibition previously existed in all other parts of the British dominions. The prohibition of the traffic in slaves, whether it be announced in a prohibition of the sale, or a prohibition of the importation, must undoubtedly occasion a certain degree of dissatisfaction; but it is amongst the worse orders of the community—amongst the professed dealers in human flesh, whose abominable livelihood is affected by the abolition; and amongst that detestable class of wretches who bring up slave girls, from the earliest age, for public prostitution. The respectable orders of society, though they may experience some inconvenience from the privation, acknowledge the humanity and propriety of the prohibition."

The consequence was, that the prohibition was allowed to continue in the proclamation, which was substituted for the one above mentioned, the second Article of the substituted proclamation being as follows: "The sale and purchase of slaves in the territory of Delhi are also strictly prohibited; and any person who shall buy or sell, or shall be concerned in buying or selling, one or more slaves shall be liable to be punished by the court of criminal judicature."

The final result is very extraordinary and very illustrative. The proclamation and all distinct recollection of its contents appear to have perished at Delhi; but in its place there subsists a belief that Sir C. Metcalfe abolished, not the sale of slaves, but slavery itself.

The Commissioner of Delhi says, in his answers to the questions of the Law Commission, "Since the promulgation, in this territory, of the law prohibiting slavery, we have not even recognised possession as a claim; and I do not at this present moment recollect any instance of a male slave petitioning for emancipation. I have known very many applications from the unfortunate class of females purchased for the purposes of prostitution, and in every case the applicants were absolved for any further compulsory servitude, the mistress being referred to the civil court to obtain compensation for any expense incurred for food, clothing, jewels, &c."

The judge of Delhi says, "About the year 1811 some orders on the subject of slavery were issued by the then chief authority of Delhi. The precise nature of these orders I am now unable to state, a copy of them not being procurable; but I have reason to believe that they went far to remove all invidious distinctions between master and slave, and that the courts in the Delhi territory, which have probably been guided in their decisions by the orders in question, have not for many years, so far as I am aware, recognised any right or immunity beyond that of service to attach to the one which did not, in an equal degree, belong to the other."

The officiating session judge of Cawnpoor says, "The reasons why such cases have never come before me is principally that my experience, since 1833, has been wholly confined to the Delhi territory, where, for a long time, the name of slavery only has existed; its reality has been long extinct." "Having been, before my appointment to Delhi, for eight years in South Behar, where I have myself, as registrar and civil judge, daily decided cases of purchase of whole families of predial slaves or kohars, I was astonished to find that slavery was not recognized at Delhi. I was informed that, since Mr. Seaton's* time, no claim to a slave, or to compel slaves to work, has been allowed; and I found the established practice of the court, that whenever a person petitioned that

* Mr. Seaton was Sir C. Metcalfe's immediate predecessor.

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that another person had claimed him or her as a slave, an ayadnama, a certificate of freedom, was given him or her to the effect that they were free. I gladly hailed this custom; but I pursued another course, which I deemed more effectual. It struck me that issuing those ayadnamas, or certificates, was, to a certain extent, allowing the existence of slavery in some sort or other. When similar applications were made to me, I used merely to pass an order that slavery did not exist, and informed the petitioners that if any person molested him or her, he should be punished."

The additional judge of Burdwan says, in his answer to the questions of the Law Commission, "In this district the impression amongst the natives is almost universal that the existing laws prohibit the purchasing of slaves; and though this is not in reality the case, still all that now remains of the traffic in slaves is the occasional purchase of a few children who are offered for sale in times of great scarcity."

The officiating magistrate of Hooghly, after stating a case from the records of his office, in which two slave girls, who had been abstracted from their master's house, were made over to him, though they alleged that they had met with constant maltreatment in his house, adds, "It would not, however, be fair to judge of the practice of the court from one isolated instance. The idea that the natives in general entertain of what is likely to be the decision of our courts, in cases of slavery, is widely different. I am informed by the old inhabitants of the place, that under the Dutch government, which encouraged slavery, an immense number of persons of that class were to be found in Chinsurah; but finding, after the cession, that their new rulers looked with a cold eye upon the right of property which the master asserted in the slave, they had generally shaken off their fetters, and gone abroad as freemen. So strong, indeed, was the opinion of our disinclination to uphold slavery, that I cannot learn that any one ever came forward to reclaim his runaway bondsmen. Such is still, I have reason to believe, the prevailing idea on this subject of the inhabitants of the district at large."

The joint magistrate of Bograh concludes his answer thus: "I would beg to remark, that the prevailing idea amongst the natives now is, that slavery has been long since abolished; and the system has, to all intents and purposes, ceased."

Since the general subject of slavery was referred to us on the 5th November last, we have examined as many native witnesses conversant with it as we could find in Calcutta. One of these, Durbsing Das, Oviah Mussul Khan, speaking of his country, North Cuttack, states as follows: "All kinds of slaves are constantly sold; but, according to popular recognition, the consent of the slave is necessary. This custom has arisen from a proclamation * issued in 1824, by Mr. Robert Kerr, who was Commissioner of Cuttack."

A slave who was sold against his consent, ran away. His master used force to coerce him. He complained to the magistrate, who gave him no protection; he then appealed to the Commissioner, who gave him his liberty, fined the purchaser, and issued the proclamation of which I have spoken, declaring the sale of slaves illegal. Since that time, I think in 1829 or 1830, a slave complained to Mr. Forester, the magistrate, who declared a deed of sale to be unlawful, fined the purchaser, awarded costs from him to the slave, and referred the purchaser to the civil court to recover the price he had paid from the seller. This is the only case I remember since the proclamation. The effect of the proclamation has been, not to put an end to sales, but to prevent their taking place without the consent of the slave.

These instances all point to the conclusion that the respectable and influential portion of the native community may be expected to yield a ready obedience to any commands of the ruling power, having for their object the protection of slaves from oppression.

I have been careful, in setting forth these instances, to confine myself entirely to statements of fact, and I have, therefore, omitted some strong expressions of opinion contained in the documents from which I have quoted. These expressions are in favour of the perfect safety of legislating, to any extent, on this subject;

* It is right to mention that another native witness considers this to be a local custom of Cuttack, existing before the proclamation of Mr. Kerr.

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subject; but I am not sure that I have not met, in the mass of evidence before me, opinions which ought to be placed in the opposite scale. I can venture to affirm that I have met with no statements of fact to be opposed to those which I have set forth.

Assuming, then, there is no reason to apprehend that the proposed law will excite discontent in any important degree, it remains only to be considered whether, upon intrinsic grounds, it is desirable that the master should not possess the power of moderately correcting his slave.

It is necessary to bear in mind that the question relates to such moderate correction as a parent may inflict upon his child; not to such severe punishment as a West Indian master might inflict upon his negro. This difference, it is true, is only one of degree; but it, nevertheless, is a difference of fundamental importance, as regards the proposed measure, or, more strictly, as regards the reasons by which the proposed measure must be justified.

If the slave-owner of Bengal were now, by law, in possession of a power by which he could extort productive labour from his unwilling slaves, it might be desirable, for the sake of humanity, to take away that power; but it could not be alleged, as one of the reasons in favour of such a measure, that the power to be taken from the master was a power of no substantial value to him. I think such a reason may be alleged in favour of the proposed law; and I think that reason, coupled with the liability to abuse which is inseparable from a power residing in private persons to inflict corporal punishment upon adults, sufficient to justify the enactment of the proposed law.

Further, if the power in question were substantially valuable, it might be necessary to accompany its abolition, where it still exists, with other measures which may well be dispensed with upon the contrary supposition.

I think it is desirable that the master should not possess the power of moderate correction.

Our researches into the subject of Indian slavery have led me to believe that it operates in a great degree in mitigation of the evils which are incident to the state of society prevailing in the greater part of this country. I believe that it mitigates the evils of poverty, at all times pressing heavily upon the lower orders; in times of dearth and famine, pressing with intolerable severity. Slavery may be regarded as the Indian poor law and prevention of infanticide; and if it were necessary, for securing the advantages which belong to it in this capacity, to invest the master with the power of moderate correction, I should hesitate before I pronounced an opinion against the legal sanction of that power: but I do not think that the power of moderate correction can have that effect. The only way in which it can be supposed to have that effect is by enabling the master to obtain productive labour from an unwilling slave; to obtain that kind of labour which will leave a surplus after maintaining the slave and his family. The experience of West Indian slavery and of English pauperism both show, in their opposite results, that productive labour cannot be extorted from an unwilling labourer, without the infliction or the expectation of such punishment as English manners will not tolerate, as the judicial authorities of British India do not recognise, and, as I believe, the laws of India never sanctioned. The investigations of the Commissioners of Poor Law Inquiry in the year 1832-3 produced, if my memory does not much deceive me, an irresistible body of evidence to the truth of this doctrine. It is not that a man cannot be made to do work by such correction as a parent may inflict upon a child, but that he cannot be made to do such work as will pay for his maintenance, and leave a profit to his employer. Now there is not, I think, one of the judicial authorities of this presidency among those who have given a distinct opinion upon the point, who recognises any greater right in the master than that which a parent has in respect of a child or master in respect of a scholar or an apprentice. Consequently if the slavery of this part of India is beneficial to the master, it must be either because the slave has some other motive besides terror to make it so, or that the master oversteps those narrow limits to this power of correction which are recognised by all those judicial functionaries who admit that any power of correction at all resides in the master. The former supposition, I believe, is in accordance generally with the real state of facts in this country; the latter is only realized in rare cases of exception. Slavery in the east is not like slavery in the west,—a system of mere violence and oppression, a system of which the vivifying principle is the dread of the cart-whip. Slavery in the east is a system which seems to be held together by the

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mutual interests of master and slave, and by the force of habit; it is held together very loosely, no doubt, but still sufficiently to produce practical results. The perpetual and hereditary service of their domestics is what the upper classes in India particularly desire, as conducive to that privacy which belongs to their households. On the other hand, the lower classes are glad to bind themselves and their posterity to such perpetual service, in order to be secure of subsistence in sickness and in old age, and in those periods of scarcity which are every now and then recurring. The force of habit, so peculiarly strong in this country, operates also upon both parties to prevent the dissolution of their mutual relation. All I have hitherto read and heard of Indian slavery leads me to think that it may be described, with some approach to accuracy, as a custom according to which a poor family serves a rich one from generation to generation, the rich family in return supporting the poor one in age and sickness as well as in health and vigour, and in periods when the poor family could not earn enough to maintain itself, as well as when it could earn more than enough. The status of each family of slaves appears to originate in one of two ways. First, in a contract by which a freeman sells himself and his posterity, or sells his child (or other relative) and its posterity; and secondly, in the birth of a child which has been begotten by a man of superior caste upon a woman of inferior caste. Such child is, in some parts of the country, a slave, and may become of course the stock of a race of slaves. But in whatever way the status may originate, the continuance of it must, it would seem, except in cases of abuse, have been in a great measure voluntary on the part of the slave; for the master never seems to have had any means of enforcing his rights which were at once lawful and effectual. Proceedings against a slave in courts of law are manifestly ineffectual. Such moderate correction as a parent may inflict on a child certainly was lawful, though many of our functionaries no longer permit it; but it must always have been ineffectual. Such severe correction as would be effectual has always been unlawful.

This last proposition seems evident, from the answer of the muftees and pundits of the Sudder Dewanny Adawlut, already quoted in one Report. The muftees say, "It is further unlawful for a master to punish his male or female slaves for disrespectful conduct and such like offences, further than by tadeeb (correction or chastisement), as the power of passing sentences of tazeer and kisas, &c., is solely vested in the hakim. If, therefore, the master should exceed the limits of his power of chastisement above stated, he is liable to tazeer." Tazeer is, in its lowest degree, the kind of punishment inflicted upon the smallest misdemeanors by the magistrate. What the master may inflict upon his slave is something less than the lowest degree of tazeer.

The pundits say, "In cases of disobedience or fault committed by the slave, the master has power to beat his slave with a thin stick, or to bind him with a rope. And if he should consider the slave deserving of severe punishment, he may pull his hair, or expose him upon an ass."

More correctly shave his hair, as our secretary, Mr. Sutherland, informs me.

The thin stick reminds me of the alleged right of an Englishman to correct his wife with a similar instrument. It is true that the ignominious punishment last mentioned might be felt severely by some individuals, but as a general method of extorting profitable work from a reluctant slave, it can never have been efficacious. If applied with the frequeney with which the cart-whip is applied in Georgia or Carolina, it would soon cease to be any punishment at all. In what light, too, these punishments were looked upon by the lawgiver himself, is manifest from the following passage of Menu: "A wife, a son, a slave (mistranslated servant by Sir William Jones), and a younger whole brother may be corrected when they commit faults, with a rope or the small shoot of a cane."—*Digest*, ii. p. 324.

The description of persons among whom the slave is enumerated shows clearly the description of punishment to which he was liable in common with them.

For confirmation of the view I have here taken of the Hindoo law, I refer to the compilation by Mr. Sutherland, which will be found in the Appendix to our Report.

I feel, therefore, little doubt that slavery in Bengal (if indeed slavery be not an improper name for such a condition) has subsisted for ages without any such power being vested in the master as would enable him to extort productive labour; and I believe that the power of parental correction which he possesses, when it has not already been taken from him by judicial discretion, may be taken from him without any real injury to his interests. I do not mean to say that it may not be convenient to the master, in the government of his household,

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but I think that the great liability of such a power to run into excess when it is exercised against adults, more than counterbalances any good to the master which can result from it when confined within its legal limits.

I have been considering the proposed law with reference only to those inflictions by the master on his slave which have the correction of the slave for their object. But a master has, by the Mahomedan law, a right of a different kind over his female slave, of which the abolition ought to be universally and certainly known. The answer of the muftees, from which I have quoted above, is of such a nature, where it touches this topic, as to be expressed in Latin instead of English, in the translation from the original Persian. I need not allude to it further than to remark, that in it is implied that the master may compel his female slave to be his concubine. Of course no court of justice under our Government would hold such a law any justification of an act of violence or a course of persecution: but I think, nevertheless, that it may be reckoned among the advantages of the proposed law, that it will include a distinct negation of so monstrous a right.

I am not aware that there is any discrepancy between any doctrine of this Minute and what my much esteemed colleagues have said in Note (B.) to the Penal Code.

The doctrine of my Minute, which at first sight may appear at variance with their views, is that the master's power to correct his slave cannot with propriety be abolished by an immediate, special and isolated measure, unless the power is already so limited as to have no substantial value; because if the power had a substantial value, it might be proper to accompany its abolition with other measures. It is true that my colleagues, when they sent up the Penal Code, did not say this; but I think they have not said anything that is inconsistent with it.

(signed) *C. H. Cameron.*

MINUTE by the Honourable *A. Amos*, Esq.; dated 4 February 1839.

Consultations. 4 Feb. 1839. No. 67. On Slavery Examinations.

Knowing the anxiety of the Honourable Court of Directors to be furnished at the earliest opportunity with all the information which has been collected upon the subject of slavery by the Law Commission, in consequence of the recent directions of the Honourable Court, as a member of the Law Commission I beg to lay before the Council a copy of the examinations which have been taken pursuant to such directions, and to observe that the subject continues to occupy the particular attention of the Law Commission.

(signed) *A. Amos.*

QUESTIONS.

Consultations. 4 Feb. 1839. No. 68. Enclosure.

1. Of what place are you a native, and what districts are you principally acquainted with from residence therein?
2. What are the classes of domestic slaves, and what their conditions, according to your observation?
3. What usually is the origin of domestic slavery?
4. Are the sale and purchase of domestic slaves frequent amongst the Hindoos or Muslims?
5. By what means are recusant domestic slaves coerced?
6. In what modes are domestic slaves usually worked?
7. Does agrestic slavery obtain at any places with which you are acquainted; what is its character, and what classes of people are such slaves, and what is the origin of their servile state?
8. Are agrestic slaves regarded as bound to the soil, and may they be sold or removed at the pleasure of the master, and are such sales and removals frequent?
9. In what modes are they worked and coerced?
10. Is manumission often practised, and is it desired by the slave?
11. Is the slave entitled to acquire property for his own use?

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12. Are domestic or agrestic slaves married with observance of rites, and is it a duty of the master to provide for the marriage of his male and female slaves; and when the slave husband and wife belong to different masters, or when the husband is free, by what rule is the ownership in their children regulated?

13. If a female slave be married to a freeman, or the slave of another person, has the husband any right to remove or retain his wife?

14. Can you mention any judicial decision or orders by magistrates passed in regard to questions between master and slave?

15. What is the general character of the treatment of slaves, domestic and agrestic, in respect to diet, clothing, care and support in illness and old age?

16. Can the slave, infirm from old age or other cause, assert a right to support on his master?

17. Does ill usage give the slave a legal right to emancipation?

18. Are slaves often let out to hire, or mortgaged?

19. What are the usual forms by which slaves are transferred?

20. Have any instances of transfer of slaves under contracts for hire for long or short periods, come under your notice; and under any circumstances is such a contract popularly considered as operating an absolute sale?

21. Does the issue of a slave, the subject of such contract, become the property of the hirer?

ADDITIONAL QUESTIONS.

Has the slave a right to food, clothing and shelter from the master? If withheld, how does he obtain redress? Can he, under such circumstances, transfer his services to another; or is it good ground for emancipation? Is cruelty or hard usage ground for emancipation? By whom are the funeral expenses of a deceased slave defrayed? Is the master prohibited from requiring any particular service from his slave? any affecting caste? Concubinage? Has a slave a right to any portion of his time in which to work for himself? When a separated slave is called on to perform other services than to attend at marriages, festivals, &c., does he ever receive hire for such extra service? Have these separated slaves usually a spot of free land given them (nankar) for the erection of their houses?

Which is cheapest, the services of a male or female slave, or of a free servant? What the expense of each? If dearer, wherein the advantage of slave service? Are male slaves ever retained merely for the purpose of retaining the females? Are female free servants for domestic work easily procurable? Are slaves frequently employed as confidential servants in the superintendence of household; or gomastahs, tehsildars, mooktears, &c.?

Can a person, becoming a slave for debt, or by selling himself, redeem himself by paying the principal debt, or with interest, or on repayment of the purchase-money? or can parents redeem their children, sold during distress, by repayment of the purchase-money, or with interest, or with expenses incurred?

Is slavery of Mahomedans confined to any particular class or classes of Mahomedans? Do Mahomedans circumcise their Hindoo slaves?

Is there any kidnapping going on for the purposes of slave trading? if so, whence and by whom committed?

What proportion do the slaves bear to the whole population? does not every respectable Hindoo and Mahomedan family keep slaves according to their ability?

Marriages.—With whom is the marriage of a female slave generally contracted; ever with a freeman? Who defrays the expenses of the marriage?

If she is married to a freeman, does she become free? if so, how is her master compensated?

*If a female slave is married to the male slave of another, do they live together; does each continue to serve his and her own master? If not, how is the master who loses his slave's services compensated? Does a male slave ever marry a free woman, &c.? if so, does she become the slave of his master? Does one person, slave or freeman, ever marry several slave women? Are you aware of the practice of "punwah shadee," "beakara," or "punwah Battur," professional bridegroom?

Offspring.—To whom does the produce of the marriage of two slaves, different masters, belong?

To the master of the male or female slaves? or the male issue to the one, the female to the other?

Does it depend on which master pays the expenses of the marriage?

To whom the issue of a marriage between a female slave and a freeman?

Between

* Are the daughters of female slaves usually married to freemen; and does the master, in such cases, receive a douceur for the bridegroom, called "Meneebanah," and thus relinquish all right over her?

Between a male slave and a free woman?

To whom, in case of a "punwah shadee?" Has the beakara a right to every alternate child? Are the female children necessarily slaves? or may they, on attaining maturity, dispose of themselves to whom and how they please? On the marriage of a male or female slave, is it ever stipulated with the master that the offspring shall not be slaves? Is it ever stipulated at such marriages that the parents shall be at liberty to sell or otherwise dispose of their female issue to whom they like?

Transfers.—Is the transfer of slaves by sale frequent; and what the usual prices? Is it unlawful for the master to sell (mortgage or let) his slave beyond a certain distance, *i. e.* the next village or pergunnah; or is his right unlimited in this respect? Would it be considered hard if he sold his slave to a resident of a distant zillah? Are there any *adscripti glebæ* who cannot be sold separate from the land? May slaves, when unwilling to go to the new purchaser, select a purchaser of their own, and can the master object to this; or may they in such cases purchase their freedom? In case of a sale, does any property possessed by the slave go to the new master, or remain with the old?

Can married slaves be sold, so as to separate them, the husband from the wife? Can children be sold (or given away) so as to separate them from their parents before a certain age, and what age? Are slaves sold by auction in execution of decrees, or for arrears of revenue or rent?

Mortgage and Leases.—What are the conditions of mortgage, and as respects the children living at the time, or thereafter born? Are long leases frequent with Hindoos and Mahomedans? How many years? Why, case? What becomes of the children; does it bind them for ever, or for a time? "Izaranamahs," "purmbhatten" (deed of sale), who maintains the slave during mortgage? Suppose he dies or becomes disabled, how does that affect the contract?

Are short leases practised? how long? at what rate?

Prostitution.—Are sale or hire leases for this purpose lawful?

Mock Marriages.—

List of Witnesses examined on Slavery.

No.	Date of Examination.	NAMES.	NATIVE COUNTRY.	OCCUPATION.
1	28 Dec. 1838	Raj Govind Sen -	- - Pergunnah Sarael, village Chuntoor, Tipperah.	- - Mookhtear of the Rajah of Tipperah.
2	28 Dec. 1838	Tek Loll - - -	- - Behar, village Futtehpoor, pergunnah Putchroke.	- - Mookhtear in the Sudder Dewanny Adawlut, Calcutta.
3	2 Jan. 1839	Vydia Nath Misser -	- - Tirhoot, pergunnah Dharour.	- - Pundit of the Presidency Sudder Dewanny Adawlut.
4	2 Jan. 1839	Hamud Russool -	- - Behar district, Patna, pergunnah Sanda.	Vakeel of ditto.
5	12 Jan. 1839	R. H. Mytton, esq. -	- - - - - -	Magistrate of Sylhet.
6	15 Jan. 1839	Dhurb Singh Das -	- - Pergunnah Cuttega, northern Cuttack.	- - Ooriah Missulkhana in the Presidency Sudder Dewanny Adawlut.
7	18 Jan. 1839	Kashee Nath Khan -	- - Village Satteen, pergunnah Khatta Rajshahye.	- - Agent of the Ranees of the late Rajah Bishen Nanth, of Natore.
8	22 Jan. 1839	Hy. Ricketts, esq. -	- - - - - -	- - Commissioner of Revenue and Circuit, 19th Division, Cuttack.
–	25 Jan. 1839	Tek Loll - -	Continuation of the examination of.	
9	29 Jan. 1839	Ram Krishna Putnaik	- - Village Burmukhundapore, pergunnah Sarael, near Pooree, southern division.	- - Mookhtear in the Sudder Board of Revenue, Calcutta.

(signed) *J. C. C. Sutherland,*
Secretary, Indian Law Commission.

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28th of December 1838.

Raj Govind Sen, Mookhtear of the Rajah of *Tipperah*.

I AM a native of the pergunnah Sarail, village Chuntoor, in Tipperah.

I am acquainted with the districts of Tipperah, Sylhet, Mymensing, Dacca, and Chittagong.

In these districts there are two classes of slaves, the kayet and chundal.

The distinction between them is, that the kayat is pure, and the superior castes can receive water from him. The chundal is impure, and can only be employed in out-door work.

A slave is either so by descent or by sale; a free person may be sold either by both his parents, or the survivor of them, or by himself.

A free person who has attained majority cannot be sold unless with his own consent.

These sales of freemen only take place in time of calamity.

Sometimes the consideration for which a freeman sells himself is marriage with a slave girl whom the master will not permit him to marry upon other terms.

Sometimes free persons are sold by themselves or by their parents to Mussulmans, and become Mussulmans. But no adult, even if already a slave, can be sold to a Mussulman without his own consent.

If a kayet slave were converted to Islamism, he would become unfit for domestic use, but would continue a slave, and might be employed out of doors by a Hindoo master.

I am not aware that there is any importation of slaves for sale in the districts of which I speak; though sometimes people going to Assam buy slaves there, and bring them back with them.

The price of a young kayet woman varies from 40 rupees to 100; that of a young man from 20 to 40.

The price of a young chundal woman varies from 10 to 20 rupees; that of a young chundal man is about the same.

The cause of the high comparative value of the female among kayet slaves is, that she attends upon the ladies of the family.

The price of a kayet female child is from 20 to 30; that of a male child from 10 to 25 rupees.

That of a female chundal child is from seven to 10; that of a male child the same.

There is in Sylhet a class of out-door slaves who are Mussulmans; I believe they are low caste people who have been converted, but have retained their servile state.

Slaves are very numerous in these districts; a family of respectability will frequently have from 10 to 25 families of slaves, and there is no family of respectability, either Mahomedan or Hindoo, that has not at least one family of slaves.

I should say one-fourth of the population are slaves.

Many slaves are not required to do regular work for their masters, but only to attend at festivals.

There is generally a reciprocal regard between master and slave, and the master treats his slave with more kindness and attention than his hired servant.

In general it is considered derogatory to sell a slave, but it is done when the owner is in distress.

It is customary on the marriage of a daughter to give one or two female slaves as her attendants.

If a slave gives offence, it is usual to give him a slap or a blow with a shoe.

I never heard of a case of manumission, but a master sometimes expels his vicious slave.

Slaves are married with the same ceremonies as free persons of the same class; and when the husband and wife belong to different masters, it is usual for the owner of the woman to give her to the man's master, receiving a present, which is always less than her value.

If this kind of marriage take place without the consent of the woman's master, the offspring are all his slaves.

Sometimes female slaves are married to persons whose profession it is to go about as the husbands of slaves; these persons are called Byakara, and this kind of marriage is called Punwah Shadi. The offspring of this marriage are the slaves of the woman's master. The byakara is generally a slave, but receives to his own use what he earns as a byakara; he comes to each of his wives about once in a month or two, and receives at each visit sustenance and a present; he receives at each marriage four or five rupees.

It is not usual to let slaves to hire; but I have heard that beyond the limits of the Company's territories, in the hill country of Tipperah, Munnypore and Jintea, that custom prevails.

In a case which was decided in appeal, in the Nizamut Adawlut, in 1837, certain slaves were restored to their owner; the name of the case is, "Photea and Others (the slaves) *v.* Musnud Ali, Zemindar of Sarail," whose agent I was.

A nephew of mine brought an action against a slave of his and two persons to whom the slave had clandestinely given his own daughters in marriage; the object of the suit was to recover the two female slaves; the suit was compromised.

In another case, of which the circumstances were the same, the master got a decree in the zillah court of Tipperah, and recovered his female slave.

I have been 18 years in Calcutta, and only know these cases from hearsay.

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Tek Loll, Mookhtear in the Sudder Dewanny Adawlut, *Calcutta*.

I WAS born in Behar, in the village of Futtehpore, purgunnah Putchroke.

I am acquainted with that district, and the adjoining districts.

Of Hindoo slaves there are two classes; in Behar, the kuhar and the dhanuk, which is also called Juswur Kurmi; these are both inheritable, and are transferable by sale. By the local custom of Behar, free persons, whether infant or adult, of these two classes, may be sold by their maternal uncles or maternal grandmothers, not by their parents.

No one would buy a free person of these classes, unless the maternal grandmother or maternal uncle were present at the delivery, and consenting.

The mother has a veto upon the sale, but not the father.

The maternal grandmother has the prior right to sell.

She being dead, or permanently absent, then the maternal uncle.

These sales take place not only in times of calamity, but at all times.

Bun vickree is one kind of these sales, which takes place when the subject of the sale is absent from his family, and cannot be got at.

The consent of the subject is quite immaterial, and is not asked.

The price is lower when the sale is bun vickree, on account of the risk the buyer runs of not getting possession of the person sold.

If a person thus sold were to refuse compliance, the buyer would coerce him, and I should think the magistrate would support the buyer in doing so.

I do not know any case of the kind, of my own knowledge, but I have heard of such cases.

The kuhar and juswur kurmi sometimes sell themselves to their creditors, or for the purpose of paying their creditors with the price.

These sales take place not only to Hindoos but also to Mussulmans, or other persons.

When a Mussulman is the buyer, and makes a convert of the slave, the slave is called Moollah Zadah.

I have known Mussulmans buy slaves brought from other districts; but a Hindoo would not do so, because he would not be sure of the slaves' caste, and would fear pollution. The slaves thus brought from other districts are generally children.

Besides those who have thus become slaves from freemen, there are many who are slaves by descent; these have all descended from persons belonging to the kuhar or juswur kurmi, and who have been sold in the manner described.

In case of scarcity or famine other castes sometimes give up their children to be brought up by persons in good circumstances; but no price is given, and the children are not slaves, though they perform services in the house.

Sales of free persons, as above described, are very common, and so are sales of persons already in slavery.

The only difference between the kuhar and the juswur kurmi is, that the former being of inferior caste carry palanquins, which the latter do not; with this exception, they are both employed in the same menial offices and in agriculture.

The price of slaves of course varies much according to circumstances; but the price of a young female may be from 50 to 125 rupees; and that of a young male about a third less. The cause of the difference is, that the girl may have children, which will belong to her owner.

Children of from six to eight sell for from 10 to 15 rupees, the price of females exceeding that of males in about the same proportion as above.

The pergunnah of Putchroke contains about a lakh of people; I should think the proportion of slaves is about one-eighth; probably the same proportion may prevail in the rest of the zillah.

If a slave will not work, he is coerced by threats, by flogging, and by stopping his rations.

The usual character of slaves is obedient, but sometimes slaves are refractory.

In agricultural labours slaves are generally mixed with free labourers, and no greater quantity of labour is exacted from them; both work the whole day, with short intervals for refreshment.

2d of January 1839.

Vaydia Nath Missur, Pundit of the Sudder Dewanny Adawlut, *Calcutta*.

I AM a native of pergunnah Dhar, our zillah Tirhoot.

I am well acquainted with that zillah, and have some knowledge of the adjoining districts of Sarun and Poorneah.

The slaves in Tirhoot are all kyburts, but they are subdivided into kyburts proper, dhanuk, amot and kurmi.

Kyburt, in common parlance, is pronounced keeot.

Many people of these castes, however, are free.

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The origin of all this slavery must be traced to self-sale, or self-gift. I arrived at this conclusion by comparing the actual state of things with the doctrine of the Shasters.

By the Hindoo law a Brahmin cannot be a slave to anybody; a khetrye, or byse, might be, but I never heard of any that were.

The slaves of the several classes mentioned are nearly the same in regard to purity, and are employed indifferently in in-door and out-door work.

There are no slave castes in my own country, nor does the Hindoo law recognise slavery as incident to caste.

Many of the slaves of great families are settled on the estates, and are not required to perform any service except attending at ceremonies, and defending their master in case of need; they pay rent, but less than is paid by free persons; they have, however, no right to any part of the produce of the land, nor to any property as against their master; and if he is angry with them, he sometimes takes everything from them.

The rajah of Durbhunga has a great many slaves; many free people of the castes specified are in the habit of applying to be put on his list of slaves; their object is to obtain the offices of gomastahs and tehsildars.

I know of no text of Hindoo law which gives the slave a right to sustenance from his master, but all masters do maintain their old and infirm slaves; and I think, as this is the established custom, a court of justice would decree maintenance to a slave if it were refused; but I know no case in which the question has been brought before a court; indeed slaves are generally more favoured than other servants.

The practice of self-sale is now frequent; the transaction is recorded by an instrument called param bhatarak; the price in these cases is the absolute property of the slave, and descends to his heirs, which is also the case with all property of which the slave may have been possessed previous to the sale.

The sale of free children by their parents only takes place in cases of great distress, and would be invalid in other circumstances by Hindoo law; only the castes above mentioned sell themselves or their children.

My paternal grandfather died, leaving five sons; they divided the property, and among other things eight families of slaves. One of my uncles died, and his slaves fearing that they would be shared among the other brothers, and that their families would thus be separated, fled away to Dahampore, in Purneah, which is on the estate of the durbhunga rajah; my eldest uncle, the head of the family, went after them to induce them to return; they agreed to do so, but the head of the family dying at that time, they did not come back. The death of this uncle took place about 30 years ago, and since that time my other uncles, my father and my elder brother have written occasionally to the rajah's manager to claim the slaves; we have sent messages, and they answer, "We will come." We have never sued for them, because it would be expensive if the courts do not favour the claims of masters to slaves; and another difficulty exists in this, that we are a numerous body of kinsmen, having a joint undivided claim on several families of slaves.

Those of the slaves who have acquired no property, say they are ready to return, but those who have made acquisitions refuse.

It would be considered disrespectable in us to take the acquisitions of these slaves, which by law belong to us.

I am one of an undivided family of four brothers; we have in our household 13 slaves, three who descended to us, and 10 whom we bought; besides these, and besides those above mentioned who went away to Derhampore, there are two families consisting together of 10 or 12 individuals, who belong to us, my aunt and my sister; they are settled on another part of the durbhunga rajah's estate, but they come to us whenever they are summoned to attend at festivals; we do not support them.

The chastisement of a slave ought to be the same as that of a son, that is, by the half rattan, or by tying him up by the hands. But it may be inferred from the power which the Shasters recognise in the master to exact work, that he may punish the slave who refuses to work, and it is the duty of the ruling power to make the master and slave both perform their duties. One of our slaves ran away, and my brother applied to the magistrate to have him restored; this took place about 20 years ago; the magistrate issued orders to the darogahs, but the slave escaped into the Nepaul territory. The slave afterwards, on hearing that I was established in Calcutta, came and joined my household; my brother then wrote to me to inform me of his having run away, and to beg me to turn him away, but I kept him notwithstanding.

I do not know any case of manumission, but I have heard of manumissions where the slave had done something with which the master was much pleased. When a slave saves his master's life, he is *ipso facto* manumitted, according to the Hindoo law, and in such case the slave is entitled to share in the master's property as a son.

Slaves are employed generally in menial offices, with the exception of cookery, which would be impure if performed by a slave. Poor persons who have no slaves hire persons to do such work, but slaves are preferred by those who can afford to purchase them, because slaves have permanent attachment to the family.

In general, I think it is more economical to be served by slaves than by hired servants.

A master is in general more disposed to favour his slave than a hired labourer, from whom he generally exacts the full measure of work.

A severe master might oppress his slave in a way which a hired servant of the same caste would not submit to.

The slave has no right to any portion of his time.

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A slave who does not work regularly for his master, but is only called upon to attend at festivals, or to do other occasional service, receives when so called upon the same rations as a freeman, and wages, but not so high as those of a freeman.

No absolute slave has a right to purchase his freedom, but sometimes there is a stipulation for redemption in the contract of self-sale, or of the sale of a child.

I have never heard of a class of slaves called Moollah Zada. The Hindoo slaves of Mussulmans remain Hindoos.

By the Shasters, property in slaves (or bipeds, as they are called) is treated with the same respect as immovable property, and is transferred with equal formality, consequently no one buys without full inquiry; and in the conveyance all the particulars are recorded. When a slave is bought of a stranger it is usual to require that some known person should become surety that the seller has a right to sell.

Perhaps one or two-sixteenths of the whole population of these districts are slaves; but the great majority of the Khyburt caste are slaves. Almost all respectable families have slaves, even those who are in a state of decay.

The same rites are observed at the marriage of slaves as of other sudras, and the master is under a moral obligation to provide for the marriage of his slaves as of his children. The parents of a young slave are consulted as to the choice of a bride or bridegroom. Illegitimate children of a slave woman are slaves of the woman's master.

When two slaves of different masters intermarry, there is usually a stipulation between the two masters respecting the ownership of the children; where there is no stipulation the male children follow the father, the females the mother.

There is frequently a special stipulation respecting the ownership of the children, depending upon the expenses of the marriage being all paid by one party, or some such cause.

If a free person of either sex marry a slave, without stipulating for freedom with the master, such person becomes a slave; but if such person stipulates for freedom, then the children are slaves or free according to their sex. I am stating the law as laid down in the Shasters, but I have heard that the practice is conformable to it, though I do not know any case of my own knowledge.

If a male slave marry the slave of another master without his consent, such slave may, nevertheless, have access to his wife, but so as not to interfere with her service more than conjugal rights necessarily require.

The practice of the punwah shadee is known in the districts of which I speak.

The sale of slaves is very common, but it is becoming less so, because the leaning of the courts against slavery deters people from purchasing. The probability that the courts will not enforce the rights of the master, has caused the price of slaves to fall considerably.

The present average price of a young girl is now from 25 to 40 rupees, and it used to be from 50 to 60 rupees. The price of a young male of 18 to 20 is from 16 to 20 rupees, and was from 30 to 49 rupees.

It would be considered oppressive to sell a slave so as to place him beyond the reach of communication with people of his own class, or to separate families. The courts ought to interfere to prevent such sales.

There are no slaves adscript to the soil.

I know no instance in which slaves have been sold in execution of a decree, or for arrears of revenue or rent; but I see nothing illegal in such a proceeding.

I am not aware that slaves are ever hired out, but the interest of a debt is sometimes paid by the services of a slave, the above remaining in the possession of the debtor, who continues to maintain the slave.

The mortgage of slaves is legal, but not much practised, not being convenient.

If a mortgaged slave die, the loss falls upon the mortgager, and he must provide another slave; but if the death be occasioned by the fault of the mortgagee, then the loss falls upon him.

Sale for the purpose of prostitution is of course illegal, because a prostitute necessarily loses caste.

2d of January 1839.

Hamid Rupool, Vakeel of the Sudder Dewanny Adawlut, Calcutta.

I AM a native of Behar, district of Patna, pergunnah Sanda.

I am acquainted with other districts of Behar, viz.: Ramghur, Behar Proper, Shahabad, and Tirhoot.

There are two classes of Hindoo slaves, kahar and kurmi; the kahar are principally domestic slaves; many of the kurmi have separated themselves from their masters, owing to the decay of the master's family, and have established themselves as cultivators upon their own account. The right of the master to these slaves remains, nevertheless, and may be asserted.

The slave generally returns to service when required; if he refuses, and a breach of the peace arises, and the case comes before the magistrate, he would, if he had no doubt about the slavery, pass an order for the delivery of the slave to the master; if he had a doubt, he would tell the master to bring his action in the civil court. I do not know any instance of this of my own knowledge, but I have heard of such instances.

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I remember a case in the zillah Behar, when one Afzul Ali, a muslim, applied to the magistrate, and being referred to the civil court brought a regular action in the zillah court against the slave (a girl), and Sulamut Ali, the person who was harbouring her. He got a decree, and the girl was restored to him.

The great majority of kurmis are absolutely free; but, as far as I know, a free kuhar does not exist, though many have left their masters and are practically free. But these, when claimed, never pretend to be goorwa or unowned. They are sold by their owners, but never by any one else.

The sale of free children is rare, but in times of extreme distress even Brahmins, Khetrees, and Syuds will sell their children. I have heard that this occurred in the great famine in the Fuslee year 1177. At present only the lower classes sell their children when urged by distress.

The sale of high-caste children is not considered valid in law, and I have heard that the purchasers of such children, in the great famine, returned the children when they discovered that they were of high caste.

By strict Mahomedan law no one can be a slave but a Cafir taken in battle; but by popular recognition the sale of a Mahomedan child of the labouring classes is permitted. The law is evaded by framing the deed as a contract of hire for a long period. The same form is used in the sale of a Hindoo, for in Behar the Mahomedan forms of contract and conveyance have been generally adopted.

The offspring of a person thus sold is free. My grandfather bought a female kuhar in this manner; she remained in our family as a slave till her death, but we have no right to her children. They did service in our family and were supported by us, but they are free.

I have never known a contract of this sort in which any mention was made of future offspring, but I have known cases in which men have sold both themselves and their existing offspring by the same deed.

I have never heard of any importation of slaves into zillah Behar or Patna, and people do not buy slaves from unknown persons.

If a slave refuses to work, the master corrects him with a slap on the face or a rattan; if the slave is incorrigibly obstinate or vicious, he is turned away. This rarely happens. Slaves perform menial offices in the house, including cookery, when the master is a Mahomedan. Slaves are also employed in agriculture.

Manumission is rare, and not generally desired by the slave; but it sometimes happens that a master, anticipating, from the evil disposition of his children, that they will maltreat the slaves, manumits such of them as he has a regard for.

The slaves of great people frequently appear to possess property, but I suppose in law it is the property of the master. I know of no case in which the right to such property has been disputed between master and slave.

A master has no right to exact from his slave offices which are unsuitable to his caste, and I presume the slave would be protected in refusing to perform such offices.

The Mahomedan master has a right to exact the embraces of his female unmarried slave of the same religion, but not of a Hindoo slave.

If a slave so subjected to the embraces of her master has a child by him she is called umul would (the mother of offspring), and becomes free. The offspring inherit as legitimate children.

Slaves are not entitled to any time to work for themselves.

A slave who is separated from his master is entitled to food and clothing if called upon for some occasional service, and he also commonly receives a present.

I think upon an average that there is some economy, and certainly some comfort in being served by slaves rather than free people, particularly female slaves. In the country female free servants are not to be procured. Both males and females of the lower classes think it derogatory to them to take menial service, and to the females in particular it is disreputable.

Slaves are frequently employed in offices of trust; they are generally more trusted than free servants.

A man who has sold himself into slavery has no right to redeem himself without his master's consent.

Nor has the parent of a child which has been sold any right to redeem the child.

Syuds* and sheikhs, and patans and malaks† are the only Mahomedans who cannot be slaves according to the custom of the country.

A Mahomedan master employs a Hindoo slave in out-door work, and does not interfere with his religion.

The proportion of slaves in the above districts may perhaps be about five per cent.

All respectable families, whether Hindoo or Mahomedan, have slaves.

It rarely happens that a Hindoo slave is converted and becomes molla zada; I never saw one.

The same rites of marriage are observed among slaves as among free men, whether Hindoo or Mahomedan, and it is the duty of the master to provide a spouse for his slave, and to pay the expenses of the marriage.

In

* The descendants of the prophet, and the descendants of his companions.

† Descendants of persons who have received titles from the sovereigns.

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In the absence of any special agreement the master of the female slave is entitled to the offspring.

So also, if the husband is a free man and there be no special agreement.

It is not usual to make special agreements as to the distribution of the offspring.

I never heard of a free woman marrying a slave.

I am speaking of the slaves of Mussulman masters, whether such slaves be Mussulmans or Hindoos.

The husband of a slave woman has no right to remove his wife from her master's household, but he is entitled to have access to her.

Slaves are generally well treated; the old and infirm are entitled by law and justice to support and care. I have never heard of this right being enforced by application to a court.

Cruelty to a slave does not entitle him to emancipation, but the magistrate ought to interfere to prevent and to punish it.

The withholding of support, or the inability to give it, would authorize the magistrate to set the slave free.

It is thought disreputable to sell slaves, but not to buy.

The price of a Hindoo slave girl is from 30 to 100 rupees; that of a young male from 25 to 40.

It is not usual to sell slaves to purchasers living at a great distance, nor to separate families.

According to usage a slave about to be sold is allowed to object to the purchaser, and to choose any other who is willing to pay the price, and the master ought to give the slave time in such case to find a purchaser; if, however, the slave cannot find one, the transaction must proceed.

I know of no class of slaves who are adscript to the soil.

It is not the custom to sell slaves in execution of decrees, or for arrears of rent and revenue.

The practice of letting slaves to hire, or mortgaging them, does not occur in my country.

Procuresses sometimes kidnap children for the purpose of prostitution.

It would be disgraceful in a Mahomedan master to sell a girl for that purpose; it is also contrary to Mahomedan law.

12th of January 1839.

R. H. Mytton, Esq., Magistrate of Sylhet.

I WAS three years in Sylhet as magistrate and collector.

Sylhet is under ryotwarry settlement, and every meerassidar has in his family one, two or three slaves.

It is considered as a mark of distinction to possess slaves, and a man's slave is the last thing he will sell.

The number of registered meerassadars is a lac and a quarter; but amongst them are many under-purchasers who are of an inferior rank and station, and do not possess slaves, though they call themselves meerassadars.

I cannot say what is the number of registered meerassadars; for these reasons it is extremely difficult to estimate with any accuracy the number of slaves.

It is not common to sell a slave against his own consent, nor to sell one to a person residing at a great distance.

Complaints have sometimes been made to me by mothers that their master was about to sell their infant children, so as to separate them; I mean children of an age to require parental care. In such cases I have interfered to prevent the master from doing so. I have never found it necessary to do more than issue an order. I doubt whether it would be legal to enforce such an order by punishment.

I never recollect a case of the separation of husband and wife coming before me.

The greater part of the whole population is Mussulman, and so is the greater part of the slave population.

I never heard the term moolazada.

A great many Hindoo masters have Mussulman slaves, but very few Mussulman masters have Hindoo slaves.

The greater part of the poorer classes is Mussulman, and it is of course these classes who sell themselves and their children in times of scarcity. They do not object to selling themselves to Hindoo masters.

The slave population is principally employed in agriculture.

The condition of slaves differs very little from that of freemen of the same class.

I never heard of any slaves who are *adscript glebæ*.

I never heard of a case of manumission.

By law, I believe, the master is entitled to all the slaves' earnings, but in practice it is very common for slaves to possess property. Some are burkundauzes receiving government pay to their own use; some are holders of lands under their masters and pay rent.

The master can by law compel his female slave to marry against her consent; indeed both slave and free children are generally married at an age at which they are incapable of giving consent.

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Female slaves are frequently married to men whose profession it is to go about as the husbands of slaves. The object of this arrangement is, that the slave girl may remain in her master's house, and that all her children may belong to him.

These itinerant husbands receive a present at the marriage, and they are maintained, while visiting their wives, by the master.

The master is bound by law to maintain his old or infirm slave, and the general feeling would be strongly against the neglect of that obligation. I have never been called upon to enforce it as a magistrate.

I think there is no importation of slaves into Sylhet, nor do I think there is any exportation to foreign countries; but certainly, and particularly in years of scarcity, there is some exportation into the adjoining districts.

I think it would not be expedient to prevent this, inasmuch as to alleviate distress.

I do not think Regulation III. of 1832 applicable to such cases, because this is not importing from one province to another, and because, under the circumstances under which it takes place, it cannot, I think, be called removal for purposes of traffic.

There is also a practice of inveigling slaves, principally women and children, away from their masters, carrying them away and selling them in the adjoining districts, especially in the pergunnah of Brickrampore, near Dacca, which is inhabited by respectable Hindoos, Brahmins and Kayits, amongst whom there is a great demand for such slaves.

Whenever a case of this kind has come before me I have always punished it as a theft, and I believe this has been the practice of my predecessors. I have had many such cases before me.

There are many persons who are legally slaves, and who may be reclaimed by their masters, but who are practically free, and living in residences of their own.

There are others who are in states intermediate between complete slavery and that which I have just described.

The usual way in which a man sells himself is by a deed purporting to lease his services for a long term, nearly 100 years; in general the deed is called a khadagiri pottah.

In India it is common to borrow money, the borrower mortgaging his services for a short term of years.

Cases have come before me where free female children have been sold for purposes of prostitution. I have always interfered to prevent the completion of such sales, and I think I have bound over the parents in recognisance not to sell the children.

I never heard of slaves being sold in satisfaction of a decree, or for arrears of revenue or rent.

15th of January 1839.

Durb Singh Das, Oriah Missul Khan in the Calcutta Court of Sudder Dewanny Adawlut.

I AM a native of pergunnah Cutteya, in the northern division of Cuttack.

Since 1819 I have held various official situations in that province, where I remained till November 1837, when I attained my present appointment in the Sudder.

There are two classes of persons in Cuttack who generally keep domestic slaves, Mussulmans and Kaets; the latter are subdivided into Myntia or Oriah-Kaits, the Bengallee, and Lalla or Western Kaits.

There are also some rajahs and zemindars who are Kundaits, Rajpoots and Ketryas, who keep such slaves, but no Brahmin does so.

Before the Mahratta invasion of Cuttack, the Rajah Pursuttum Dheo prohibited Brahmins from keeping slaves. I do not know the reason of this prohibition, but since that time no Brahmin keeps a domestic slave.

The Byse also never keep domestic slaves; it is contrary to the principles of their caste.

The domestic slaves consist of such low castes as are considered impure.

The impure castes are employed exclusively in out-door work; all classes of people who can afford it keep these slaves, and they are constantly sold from hand to hand.

The pure castes are, Chasa, Khundait, Gualah, Tanti, Agori, Bas Bania, Ninsala: the impure castes are, Dhobee, Chumar, Ghoka, Kyut or Kyburt, Raree, Pan, Kundra, Napit Bhagti, Hari, and Dome.

All kinds of slaves are constantly sold; but according to popular recognition the consent of the slave is necessary.

This custom has arisen from a proclamation issued in 1824 by Mr. Robert Keir, who was Commissioner of Cuttack.

A slave who was sold against his own consent ran away; the master used force to coerce him; he complained to the magistrate, who gave him no protection; he then appealed to the Commissioner, who gave him his liberty, fined the purchaser, and issued the proclamation of which I have spoken.

The proclamation declared the sale of slaves illegal.

Since that time, I think in 1829 or 1830, a slave complained to Mr. Forrester, the magistrate, who declared a deed of sale of a slave to be unlawful, fined the purchaser, awarded costs from him to the slave, and referred the purchaser to the civil court to recover the price he had paid from the seller. This is the only case I remember since the proclamation. The effect of the proclamation has been not to put an end to sales, but to prevent their taking place without the consent of the slave.

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There are Mussulman slaves who are the illegitimate offspring of women of low castes, whether slaves or free women, by Mussulmans.

The offspring of a Mussulman and a low-caste woman has no right to inherit from his father, unless the ceremony of marriage has been performed between his parents.

There are also Mussulman slaves who have become so by conversion, having been bought from their parents or masters in childhood.

The origin of Hindoo slavery is, sale of free persons by themselves or their parents. People do not usually sell themselves or their children unless pressed by necessity. This kind of sale is not uncommon at the present day.

The purer classes of slaves are sometimes employed in out-door work as well as in-door. In such cases they work separately from the impure classes, by whom they would be contaminated. If a man of pure caste accidentally touches one of impure caste, he must purify himself by washing.

It is usual for people of impure caste in going along the road, if they meet a man of pure caste who happens not to observe them, to give warning, saying, " Good sir, I am of such and such a caste, you had better retire."

Formerly the impure castes lived in separate villages, and gave way whenever they met a person of pure caste on the road; but since the country came under the Company's government they have become more independent.

If a slave refuses to work or otherwise misbehaves, the master corrects him by beating him with the hand or a cane, or by tying him up for an hour or two.

I never heard of a complaint being made by a slave to a magistrate of ill-treatment.

Emancipation is not uncommon when a master is much pleased with a slave. In that case, if the slave was purchased, the master gives him the deed of sale; if there is no such deed, the master executes a farigh khatte, or release.

No time is allowed to the slave to work on his own account, and anything he may acquire belongs to his master.

The marriages of slaves take place with the same rites as those of freemen of the same caste, and the expense is paid by the master. Upon the death of slaves of pure caste the master also provides the funeral feast.

The usual practice is for the master to buy a husband or wife for his slave; but when a marriage takes place between the slaves of two different owners, the owners take the offspring ultimately; and if the woman ceases to bear, when the number of her offspring is uneven the last child goes to one owner, he paying half its value to the other.

When such a marriage takes place with the consent of the woman's master, she goes to live with her husband, rendering only occasional service to her master; if it take place without his consent, he allows the husband to have access, but the children all belong to him, the woman's master.

I never heard of the intermarriage of a free person with a slave.

The low castes of which I have spoken are in three different conditions; they are either, 1, free, or, 2, actual slaves, or, 3, persons who, having been themselves slaves, or having sprung from slaves, can never escape the stigma of slavery, though they are in the enjoyment of liberty.

Persons in this last condition intermarry with actual slaves, but only when they can purchase them from their masters.

I never heard of byakuras or punwa shadee.

Slaves are generally well treated; their condition is equal to that of hired labourers.

The master is bound to maintain his old or infirm slaves, and I presume the slaves might obtain a decree for maintenance in the civil court.

The master may exact any service which is not derogatory from his caste; it would be derogatory to the pure caste to compel them to work with the impure, and would, therefore, be an act of oppression.

It is more economical to employ slaves than freemen, both in-doors and out-of-doors.

I am an owner of slaves; I have 50.

I give an adult male slave a seer of rice, half a chittak of salt, half a chittak of oil, and one quarter of a seer of dal, or a pice to buy vegetables.

I also give two pice a week for tobacco; two pice will purchase as much tobacco in Cuttack as four annas here.

I also allow them to cut firewood upon my ground; the usual allowance for firewood, when the slave is to purchase it, is half a pice a day.

I give four dhoties, two ungurkhus, one chudder, and one blanket, every year.

This is the usual allowance given to slaves.

They are provided with lodging.

They are trusted with the custody of money and other valuables in preference to hired servants.

There is no redemption in the case of self-sale or sale of children by their parents.

There is a class of persons who agree to serve as slaves for food; they can put an end to their servitude when they please, but the stigma still remains. These people differ from hired servants in respect that they live upon the leavings of the master's table, which degrades them to the rank of slaves.

The children of such people, if born after the servitude commenced, are slaves for ever.

Such people can acquire no property during the continuance of the servitude.

Women become slaves in this way as well as men.

The proportion of slaves to freemen is as 6 to 10; a great zemindar will sometimes have 2,000

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2,000 slaves. There are many such. Jamer Jay Chowdree and Baghwat Chowdree, and others: I dare say there are 200 or 250 who have as many.

I have been speaking only of the northern and central divisions of Cuttack. In the southern division there are but few slaves, and they are seldom sold; the great zemindars there employ freemen.

The southern and central divisions are the most flourishing parts of Cuttack.

Land is better cultivated by slaves than by freemen, for the slaves feel that they have an interest in the land.

I attribute the present depressed state of agriculture in North Cuttack to the late inundations of the sea; formerly it was as well cultivated as the other two divisions.

The castes to which slaves of North and Central Cuttack belong exist in equal numbers in South Cuttack.

The price of a young male varies from 5 to 30 rupees; that of a young female is the same.

Slaves of the Gokha caste sell for more than other slaves, because the men are fishermen and the women manage the buying and selling, and are very skilful, and their occupation is a productive one, both to the slave and the master. The Gokha is allowed to retain a large share of the produce, making over the remainder to his master. The Gokha females never sell for less than 50 rupees. The male sells for less, and I cannot tell the reason.

Generally the pure castes bear a higher price than the impure, because they can be employed in domestic occupations.

A boy of five or six sells for one-fifth of the price of a young adult. The same of a girl.

Before Mr. Kier's proclamation, the slave might be sold to a purchaser living at any distance, and the master was not considered to act oppressively.

But even in those times it was not usual to separate families.

There are no *adscripti glebæ*.

It is common to borrow money upon a mortgage of slaves; but the slaves remain in the possession of the mortgager.

It is not common to let slaves to hire.

The old form of self-sale was by a deed of sale; but since Mr. Keir's proclamation it is done by a lease of 60, 70, or 80 years, which is understood to include children born after the lease.

Sale for prostitution is illegal by the Shasters, and is considered immoral and disreputable, though it takes place sometimes.

I knew a case in which a judgment creditor included slaves in the schedule of his debtor's property, for the attachment and sale of which he moved the court. The debtor objected, and Mr. Pigou had the slaves struck out of the schedule, saying they were not fit subjects for sale.

18th of January 1839.

Kashi Nath Khan, Agent of the Ranees of the late Rajah *Bishen Nath,* of Natore.

I am a Brahmin.

I am a native of the village of Satteen, pergunnah Khatta, district of Rajshahi.

I am principally acquainted with the zillah of Rajshahi, but I have likewise some knowledge of the adjoining districts.

I possessed two slaves; one is dead, and I have now but one.

Most of the respectable people in Rajshahi, both Hindoos and Mahomedans, have domestic slaves.

The Mahomedans have generally Mahomedan slaves.

The Hindoo slaves are of the kybut kait julia mali, and generally of all the low castes.

There is no caste so low as to be incapable of slavery; but the lowest castes are not employed within doors.

The origin of slavery is self-sale and sale by parents or other relations *in loco parentis,* also of a wife by her husband. This sale does not dissolve the marriage; if the husband has access to her, the offspring will belong to the purchaser, who is the owner of the soil*.

These sales, which formerly sometimes took place in Rajshahi, were principally sales of slaves imported from Rungpore and Mymensingh. The sale of slaves domiciled in Rajshahi has always been uncommon.

But about 20 years ago a person was detected in having bought a boy of 10 years old and sacrificed him to the goddess Kali; he was tried, convicted of murder, and executed. This case occurred in Rungpore; but in consequence of it a proclamation was issued by order of the Nizamut Adawlut in Rajshahi and other adjoining districts, prohibiting the sale of slaves in the market. The people supposed that the prohibition was extended to all sales, and in consequence of this understanding, though private sales still take place, yet it is no longer the custom to register them, as it was before the proclamation in the zillah or the pergunnah cazee's office.

Formerly

* This figurative expression has reference to a maxim of Hindoo law, according to which the female is considered as the soil, and the males as the seed.

Formerly slaves were imported from Rungpore and Mymensingh by itinerant dealers. That traffic has ceased, and now, when a person in Rajshahi wishes to buy slaves, he must either go, or send, or write to those districts, and has some difficulty in finding slaves for sale.

The slaves may be about two or three-sixteenths of the whole population.

Some of the agricultural slaves are fed by their masters; but others cultivate for themselves land which their masters have allotted to them, cultivating at the same time the master's land. In this case, the master supplies cattle and implements of husbandry.

Self-sale does not now occur in Rajshahi; I believe it has ceased in consequence of the proclamation which I have mentioned, and of the inclination of the courts in favour of freedom.

A self-sold slave may be purchased in Rungpore and Mymensingh; but such a slave will probably be told that if he runs away, the courts will not restore him to his master.

Refractory slaves are coerced by threats and beating with the hand or a stick; but this consequence often follows, that some other person who wishes to seduce the slave tells him, that if he complains to the magistrate he will be liberated; and a master, therefore, very seldom beats his slave.

There are no *adscripti glebæ*.

But if an estate is cultivated by slaves, no one would purchase the estate without the slaves.

There are many estates in Mymensingh, in which the greater part of the cultivators are slaves, and there are some such estates in Rajshahi.

I can mention, in particular, the estate of Lush Kurpore. A portion of that estate has been sold for arrears of revenue; the slave cultivators were not sold with the land, and I consider them to be still the property of the old zemindar; but practically they are free ryots, paying rent to the new zemindar.

When slaves are sold with the land, it is usual to have separate bills of sale for the land and the slaves.

I have heard of but one instance of manumission.

The slave cannot hold any property against his master.

Slaves are married with the same rites as free persons of the same caste.

It is the moral duty of the master to provide for the marriage of his male and female slaves. Sometimes the master will buy a wife for his male slave; sometimes he will marry him to the daughter of a freeman, who consents to make his daughter a slave to obtain the favour of the master. The slavery of the bridegroom is not considered derogatory to the bride's family, she being still admitted to communion with her family. Sometimes the master will buy a husband for his female slave.

In other cases he marries her to a byakara, who visits her occasionally, she remaining in her master's house. The byakara has generally several wives of this kind, and visits them in succession. Sometimes this kind of marriage is intended only as a screen to conceal the intimacy of the master with his female slave.

The offspring of a byakara, whether he be free or a slave, belong to the masters of his wives respectively.

It is not usual for the husband and wife to be slaves of different masters, on account of the inconvenience; but if a slave of one master marries the slave of another without his consent, the offspring belong to him. If such a marriage were to take place with his consent, there would be a stipulation as to the division of the offspring.

Slaves are in general well treated; a respectable master will treat his domestic slave as a child. Less kindness is felt for the slave who does not live in his master's house; but he is treated in the same way as a hired labourer.

There is more satisfaction in having domestic service performed by slaves than by hired servants, because they are more trustworthy; but I think the expense is about the same.

The same may be said of out-door slaves.

The slave has a right to maintenance from his master in age and sickness, and the courts would enforce the right.

According to the Shaster, the master would be punished for ill-using his slave; but the slave would not be liberated.

Now, however, I believe the courts would liberate the slave.

In Mymensingh and Rungpore masters let their slaves to hire, particularly females; but not in Rajshahi. The hiring is generally for short periods, two to six months.

There are two modes in which slaves are mortgaged; one when the mortgagee has possession of the slave, whose services discharge the interest; the other when the possession remains with the mortgagor and the security of the credit, or depends upon the deed only.

Slaves are transferred by an absolute bill of sale.

I know no instance in which slaves have been sold in execution of a decree, or for arrears of rent or revenue.

There is no redemption in the case of self-sale or sale by a parent.

As far as I have observed, it is not usual to separate husband and wife or young children from their parents; but the master has certainly a right to sell his slave to whom he pleases without his consent; but the ruling power ought to restrain him in any oppressive exercise of that right.

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22d of January 1839.

Henry Ricketts, Esq. Commissioner of Revenue and Circuit, Nineteenth Division.

I HAVE been employed in the district of Cuttack, in the political, judicial, revenue and salt departments, since the year 1827.

Slavery prevails in all parts of Cuttack, but more particularly in the chukla of Budruk, in the northern division, and in the chukla of Jehazpore, in the central division of the district.

Slaves are kept by all classes of persons, and are employed chiefly in out-door work.

The slaves are, principally, Pans, Kundras, Chasas, and Gowalahs.

The Pans and Kundras are impure castes, and cannot be employed in any service by which their masters might be polluted.

There are also Mahomedan slaves.

In 1829 or 1830, in consequence of the prevalence of dacoity in the chukla of Budruk, and the impression that the slaves were chiefly concerned in those atrocities, I took a census of the slave population of that portion of the district, and found it to amount, to the best of my recollection, to about 11,000; and in 1831 or 1832 I took a census of the whole population of Balasore, including the chukla of Budruk, and found it to be 500,000. The official returns of this census are deposited in the magistrates' office.

I do not know how slavery originated in Cuttack; but accessions are continually made by the self-sale of adults and the sale of children by their parents in times of distress.

I believe the Mussulman slaves bear a less proportion to the free Mahomedan population than the Hindoo slaves bear to the free Hindoo population.

A deed of sale is the form of document used in cases of self-sale and the sale of children, and these writings purport to convey the parties sold and their descendants in full property for ever. The civil courts so far recognise these sales as to admit the deeds in evidence, for the purpose of deciding on the titles of parties claiming the proprietary right in the slaves; but the slaves themselves are never parties to such suits. I recollect no suit instituted by a master against a slave, or *vice versâ*, founded on a deed of this description; and I cannot say, therefore, what the result would be; but I should not myself enforce such a deed, on the principle that slavery is not recognised by any of our regulations.

I was for seven or eight years magistrate of the northern division of Cuttack, and during that period several complaints were preferred to me by masters regarding the non-attendance of their slaves; but I never interfered to assist in coercing the latter, and I believe it to be the general practice of the magistrates in Cuttack not to recognise the right of the master to punish or coerce his slave. I know not how this practice originated; I never heard of any proclamation issued by Mr. Keir, when Commissioner of Cuttack, on the subject of slavery.

I am not aware what measures masters resort to for the purpose of enforcing the services of their slaves; my impression is, that one or two cases have occurred of slaves complaining against their masters for maltreatment, but I have no distinct recollection of them. Such complaints are exceedingly rare.

As a magistrate, I would not recognize the relation of master and slave as justifying any act on the part of the master which would otherwise be an offence, not even an act of slight correction or restraint of the slave.

I do not know whether slaves are ever manumitted by their masters; my impression is that slaves do occasionally purchase their liberty, but I cannot call to mind any particular instance.

The slaves do not enjoy the privilege of working during any portion of time for their own benefit; the masters have a right to their full labour.

I can give no information respecting the marriages of slaves.

The slaves are generally well treated, and their condition is equal to, if not better, than that of the free agricultural labourer, particularly in a famine.

It is the usage of the country for masters to support their slaves under all circumstances; but suits are never preferred by slaves on this account, and I imagine that such suits would not be entertained by the courts.

Slaves are usually maintained by a daily allowance of food, and periodical supplies of clothing; but some have lands given them to cultivate, the master receiving half the produce, or such portion of it as may be especially agreed on.

Free persons sometimes mortgage themselves for a time, either on account of debt or for an advance of money; but I do not know for what periods such contracts are usually made or the conditions of them, whether the services of the self-mortgagor go to the discharge of both principal and interest or of interest only.

I believe that transfers of slaves from one owner to another are frequent, but that they are never made without the slave's consent.

I understand also that slaves are mortgaged by their masters as security of the payment of a debt; but in such cases the slaves continue in the possession of their owners.

I am not aware whether masters let their slaves to hire.

I know of no slaves *adscripti glebæ*.

Children are frequently sold by their parents for the purpose of prostitution, sometimes by kidnappers; these are female slaves attached to the Temple of Juggernaut, but I do not know if to other temples also.

I am

I am not aware of slaves being sold by auction in satisfaction of decrees of court, or for realizing arrears of revenue or rent.

I know of no persons being imported into or exported from the district of Cuttack as slaves.

Kidnapping is certainly not common, but a case of kidnapping of a child occurred a short time ago at Cuttack; for what purpose the child was taken I know not.

I remember only to have tried one suit whilst officiating as judge of Cuttack, in which the ownership in slaves was disputed, and I do not recollect the particulars of it.

25th of January 1839.

Continuation of the Deposition of *Tek Loll*, Moktar of the Sudder Dewanny Adawlut, Calcutta.

MANUMISSION is rare, but sometimes it takes place when a master has a particular cause of satisfaction with a slave.

Upon occasion of funerals it is usual to give one or more slaves, amongst other presents, to the officiating Brahmin.

In general, slaves are contented with their lot. They can have no property as against their masters, but by his indulgence they frequently possess property.

Their marriages and funerals are attended with the same rites as those of free people of the same caste, and the master pays the expenses.

I have seven slaves.

One female slave accompanied my family from Behar to Calcutta two years and a half ago, and is now living with us. Two (one male and one female) I bought here. The other four are left in my family house in Behar; they consist of a lad, a man who is married to the slave of another master, an unmarried girl, and a widow, who has married a second time, in the form we call "Saggai."

I bought two of these slaves, viz. the girl I mentioned, and the lad, from their masters.

Two sold themselves to me, viz. the widow, and the man who is married to another man's slave. He was a freeman, though married to a slave.

Of the other three, I bought one girl of 11 years old from her maternal grandmother, another girl (very young) from her maternal uncle, and a boy of between four and five from his maternal uncle *. I know of no case in which the price of a slave is shared between the maternal relation and the owner.

The girl I bought from her grandmother has been married since we came to Calcutta. I married her to a slave who had left his master, and who followed me from Behar, and now lives in my family as a servant. He told me he was a slave, but never disclosed his master's name. I pay him wages. The marriage was performed at my expense.

I have only heard the prices of the slaves remaining in Behar from my brother.

The girl who was bought from her master cost 41 rupees.

The self-sold man, 26; of the other two I have forgotten the price.

Of those in Calcutta, the male who was bought from his maternal uncle in Calcutta cost seven rupees.

The girl who is married to the runaway slave cost 11 rupees; she was bought in Behar.

The unmarried girl was bought for five rupees in Calcutta.

All the seven are Behar people, of the Kuhar caste.

The maternal relations who sold the children to me had settled in Calcutta, and were in distress. I do not know if the children were born here or in Behar.

It is a moral duty incumbent on a master to provide for the marriage of his slaves.

If my male slave marries the female slave of another, the progeny all belongs to the owner of the woman.

The owner of the female to whom my slave in Behar is married has assigned a house, to which my slave goes at night, after his work is over. They have children, who all belong to her master.

It is uncommon for slaves of different masters to intermarry.

It is not uncommon for a free Kuhar to marry a slave. Even if he were to marry a free woman, the children would be under her dominion, and not under his, according to the rules of the Kuhar caste, therefore he has less reluctance to marry a slave.

If a free girl marry a slave, which often happens, the children are free, as they follow her condition.

These customs belong to the Kurmi as well as the Kuhar caste.

Slaves are in general well treated. If they live in a separate house they have rations; if in the house of their master, they have their portion of the food which is dressed for the family. They all receive clothing; usually two suits in the year.

The

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* The question, to which this is an answer, was asked in consequence of our having observed a statement in the following words in the collection of papers, entitled, "Slavery in India," p. 5:—"It seems, that on the sale of a slave who separately procures his own subsistence, only one-half of the price is received by the owner, the other half going to the parents of the slave."

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The quantity of food is not fixed, but proportioned to the appetite of the slave, when he lives in the house; but when he lives separate, and chooses to dress his own food, he receives a fixed allowance. An adult male would receive three seers of rice in the husk, or two seers of wheat unground, and, in addition, three-quarters of suttoo, which is the meal made from inferior grain or pulse. This is more than he can consume, and he barters the surplus for salt and other condiments. He has no allowance of fuel, but must find it for himself.

He sometimes can get a little tobacco out of the surplus, but it is not enough to purchase pawn and betel.

It is considered that the slave has a right to support in sickness and age. I never knew it refused.

Extreme ill usage would not confer a right to emancipation, but the magistrate would punish the master in that case.

If the master had no occasion for any service from the able-bodied slave, he would tell him to go and earn his own livelihood, but without relinquishing his legal rights.

I do not know of any case of a slave being let to hire; but mortgages of slaves occur, in two forms, that is to say, when the slave remains in the possession of the mortgager, and when he is transferred to the mortgagee. In the latter case, the mortgagee supports the slave, and has the benefit of his labour, which however does not, without special agreement, go to discharge the interest.

The children born during the mortgage belong, in either case, to the mortgager.

I remember a case which occurred in Behar three or four years ago. A Suniasi claimed a man named Beetut, and several others, as his hereditary slaves. The case was decided in the plaintiff's favour by the sudder amin, and the decision was confirmed by the zillah court.

I have lived eight years in Calcutta. Before that time I lived for 22 years in the city of Patna, going occasionally to my family house.

Slaves are usually transferred by a bill of sale called "puttras." There are two ways in which the sale of slaves (whether self-sale or sale by a master) takes place. One is when the price is settled between the parties; in the other the price is settled by a committee of arbitrators, who fix the price after a personal examination of the slave. If the slave about to be sold is a pregnant woman, and the future offspring is sold with her, the price is greater than it would be if the woman were sold alone.

A Kuhar could not be required to perform the work of a sweeper, but sometimes he will do such work if his master is ill.

There are some slaves who live, with their master's consent, on the lands of other persons, and perform no service for their masters, except attending at festivals, when they receive food.

It is more economical to have labour performed by slaves than by freemen; slaves show more zeal in the service of their masters.

The females belonging to Hindoo families in poor circumstances have no objection to hire themselves as servants.

It is common to commit the custody of valuable things in the house to slaves, but not to employ them in zemindary offices.

The sale of children is very frequent in times of scarcity.

Their relations who sold them have no right of redemption.

When a man agrees to serve for food, he can hardly be called a slave. His children are not affected by the contract.

When a Mahomedan buys a Hindoo slave, he does not usually make a convert of him.

Self-mortgage sometimes occurs, and is subject to the same rules as the mortgages of which I have spoken.

This kind of contract does not affect the children.

I never heard of a byakara.

The transfer of slaves is very common; but people of consideration think it derogatory to sell their slaves, and when in reduced circumstances prefer to let their slaves go and earn their own livelihood.

It is lawful, and not disreputable, for a master to sell his slaves to purchasers living at a distance, and to separate families; but such cases are rare.

It is usual for the master, after he has fixed the price of his slave, to allow him to select any purchaser who is willing to give that price.

There are no *adscripti glebæ* in Behar.

Slaves have frequently been sold in execution of decrees by order of the courts in Behar, Patna and Shahabad, but I cannot tell whether this is still done.

They are not, I believe, sold for arrears of rent or revenue.

Procuresses do obtain female children for purposes of prostitution.

There are no dancing girls attached to the temples in Behar.

Slaves are divided among the family, like any other part of the inheritance.

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Powers of a Master over his Slave.

The 29th of January 1839.

Ram Crishna Putnaik, Mohant or Oriah Kait.

I AM a native of village Bir Mukkunda Pow, purgunnah Sarai, near Pooree, in the southern division of Cuttack.

I am mooktear by occupation.

I have lived all my life in Cuttack, and have only been two months in Calcutta.

I am the owner of six villages. I have no slaves of my own; my lands are cultivated by free people.

There are slaves in Central and South Cuttack. They are the children or descendants of men of high caste, except Brahmins and of Mussulmans by concubines of inferior classes.

Among the lower castes, self-sale and the sale of children, in time of scarcity, are also origins of slavery.

The pure castes are, Chasa, Gowalla, Khundait, Soodra (proper), Goorea (confectioner), Burai (carpenter), Loohar, Bus Bunnea (seller of spices), Napit.

The impure are:—Telle, Kyhut, Raree, Gola, Fautee, Rungree (dyer), Chumar, Gokha, Khundra, Baslee, Pan, Haree, Dom, Bagdee.

The Brahmins do not own domestic slaves, but they have slaves for out-door work.

The impure castes are employed exclusively in out-door work. The pure are employed in both out-door and in-door work.

Sales of slaves are not common.

Those slaves who are the spurious kindred of their masters are never sold. The others not very often.

The sale is invalid without the consent of the slave. This is the local usage of the country. I have heard of a proclamation of Mr. Keir, which prohibited the sale of slaves. The consent of the slave is necessary by the old local usage, independently of the proclamation.

The spurious offspring of a Mussulman by a woman of low caste would not be a slave. I do not know whether he would inherit.

I never heard of any class of slaves in Cuttack called Moolla Zada.

There are some classes so very impure, that it is necessary to wash after accidentally coming in contact with them. If one of these see a man of respectability coming towards him, he either gives way or gives warning, that the men of good caste may avoid the pollution.

If a slave of pure caste is disobedient, it is usual to correct him by slaps with the hand. But the course with a slave of impure caste is to complain to the darogah, who will admonish him. He may also be corrected by causing another impure man to beat him.

I never heard of an instance of emancipation; the slaves do not in general desire it.

It sometimes happens that a master, in decayed circumstances, will tell his slave to go and earn his own livelihood.

In this case it is not usual for the master to receive any of the slave's earnings, unless the slave should be his child.

The master does not by this proceeding relinquish his legal rights, though sometimes the slave becomes practically free; but this does not frequently happen.

I never heard of a slave being let to hire.

No time is allowed to the slave to work on his own account.

Slaves are married with the same rites as free people of the same caste, and their funerals are performed in the same way.

Sometimes a master will marry two of his slaves to each other. Sometimes he will purchase a husband or wife for his slave; and sometimes he will marry them to the slave of other masters.

Free people do not intermarry with slaves, except those people who, though not belonging to any owner, have the taint of slavery in their blood. These people marry slaves without loss of consideration.

When I speak of buying a husband or wife, I do not mean buying them from another master, for it is not usual for masters to sell their slaves; I mean the purchase of a man from himself, or of a girl from her parents.

The maxim which regulates the local usage is, that the seed is more worthy than the soil in the distribution of the offspring, and therefore if a freeman marries my slave girl with or without my consent, the offspring is his. It is not usual, upon the marriages of slaves, to make any special agreement respecting the ownership of the offspring.

If I consent to the marriage of my female slave with a freeman, or with the slave of another master, she ceases to be my slave. In the first case she becomes free; in the last she becomes the slave of the husband's master.

The condition of slaves is harder than that of free labourers. Their work is harder, their fare and clothing is worse, and they are sometimes beaten.

When I said the slaves do not desire emancipation, I mean that they look upon it as unattainable, and therefore do not think about it.

The slave is entitled to maintenance from his master in age and infirmity; and I think that Mr. Wilkinson, formerly collector and magistrate of Cuttack, enforced this right in a case which was brought before him.

It is not usual to exact the lowest offices from slaves of pure caste; but if the master insist, the slave must obey. The slaves of impure castes perform the lowest offices.

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The labour of slaves is more economical than that of free labourers.

If I could obtain slaves, I should cultivate my villages by means of them, but they are not to be had; and I should also employ them for domestic purposes.

There is no redemption in the case of self-sale or sale by parents.

The proportion of slaves (meaning, by that term, all who have the stigma of slavery) to freemen, is as six to 10. One part out of the six is an actual slavery; the other five practically free. I am speaking only of Southern Cuttack.

Southern Cuttack is more thickly peopled and more cultivated than the other divisions.

The people are more industrious; this has always been the case.

The purchase of children by procuresses for prostitution takes place. The children are sometimes kidnapped, and sometimes bought from their masters.

I remember that Mr. Wilkinson punished a man with eight months' imprisonment for selling a child he had kidnapped.

Slaves are never sold in execution of decrees, or for arrears of rent or revenue.

There are 50 or 60 families of slaves belonging to the Temple of Juggernaut. The males of these families are not married to the females, but live with them in a state of concubinage. The numbers of this College of Devadasis, of slaves of the god, is kept up by their own progeny, and no additions to their numbers from without is permitted.

There is another temple in Cuttack, that of Rogonat, which has a similar establishment.

Consultations.
8 April 1839.
No. 16.

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-general, to *F. Millett*, Esq., Officiating Secretary to the Government of India.

Legislative.

Sir,

I AM directed by the Right hon. the Governor-general of India, to acknowledge the receipt of Mr. Officiating Secretary Grant's letter, No. 81, dated the 11th ult., forwarding a copy of despatch, No. 4, of 1839, relative to slavery in India, addressed to the Honourable the Court of Directors; and to request that you will, with the permission of the Honourable the President in Council, furnish a copy of the Report from the Indian Law Commissioners alluded to in that despatch, for the Governor-general's perusal.

I have, &c.
(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India with the Governor-general.

Camp Shahabad,
7 March 1839.

Consultations.
8 April 1839.
No. 17.

MINUTES by the Hon. *A. Amos* and *T. C. Robertson*, Esqrs., dated 1st & 3d April 1839.

THE first question which I propose to consider, is the legal effect of the Slavery Act.

It seems to be clear, that by the existing law of the country, moderate correction of a slave by his master is permitted, and that immoderate correction is not permitted, and that the boundary between the two kinds of correction is not, and perhaps cannot be very distinctly defined. The effect of the proposed law is to abolish the right of moderately correcting a slave. If a charge of an assault not amounting even to touching the person, still more, if a charge of beating, however slight, be preferred by a slave against his master, the master will not in future be permitted to justify himself, by a plea of moderate correction, however gross the misconduct, however wilful the disobedience, however reckless the negligence of his slave may have been.

Our directions are, "that no act falling under the definition of an offence shall be exempted from punishment because it is committed by a master against a slave." Now it is to be observed, that several "acts falling under the definition of offences", as assaults and batteries, are exempted from punishment, because they are committed by a master against his servant; though the law in this respect would appear to be different in different presidencies, and, singular as it may seem, it is doubtful in English criminal law. Servants are under contract, the performance of which several of the Regulations, and especially the Bye-laws of Calcutta, will compel by severe punishment. The proposed Act leaves the master of the slave without means, either by his own personal correction, or through the intervention of a magistrate, of compelling the service of his slave.

It

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It may, perhaps, be said that the Act may bear another construction, viz., That a master shall not be allowed to justify an assault merely by proving that the person assaulted is his slave, but that he must go on further, and prove that the slave has been guilty of misconduct, disobedience or negligence; that a master shall not be allowed to justify an assault on his slave, unless he shows that the assault under the circumstances "does not fall under the definition of an offence". In answer it is to be observed, that if the Act only effects this, it effects nothing which is not already the established and universally known law of the country. I do not find a single opinion anywhere advanced, that by any law prevalent in India, a master has a right to give even moderate correction to his slave unless his slave has been guilty of some fault.

I think it would not be expedient, as it has been suggested, to add a proviso to the Act, that the slave may be punished under the same circumstances and in the same manner as a menial servant, for this would materially modify what I think is the obvious construction of our directions, and it might subject the slave to the Regulations respecting servants, or at least would lead us into a declaration of the power of masters over servants, for which we are not quite prepared.

It has been thought by Mr. Cameron that the Act would operate as a declaration against the assumed right of a master to prostitute his female slaves. I have added some words to the draft of the Commissioners in order to make this intent more apparent; but I think that, without making the alleged practice a substantive offence, the Act can reach it only in a very indirect and ineffectual manner. I scarcely think that it would be expedient to go so far beyond our directions as to legislate directly and expressly with reference to this infamous practice.

II. Having considered the legal effect of the Act, I propose next to consider its practical operation.

I believe, as far as an opinion can be formed upon the present state of our information, it will have no practical operation of any importance in ameliorating the condition of slavery. Already both law and practice are opposed to immoderate correction by a master of his slave; and I conceive that the practice of the magistrates and the courts would decide doubtful cases in favour of the slave. As to cases of moderate correction for misconduct, disobedience or negligence, I think that there is a variety of grounds for believing that they will rarely be brought before a magistrate except perhaps from malicious motives. If so brought, there will be great difficulty in establishing them. If established, the magistrate would seldom be justified, especially in cases of gross misbehaviour on the part of the slave, in inflicting a punishment on the master which would have any other effect than bringing the law into contempt.

III. Lastly, with reference to the question of the expediency of the proposed Act.

There is that conflict between law and the practice of magistrates, and that discrepancy in the practice itself, as to make it somewhat doubtful whether in any and what cases moderate correction may be exercised by a master over his slave without danger of legal punishment, and in a perfect code; such a point as this ought not to be left in doubt.

Still if the removal of such doubts will not be attended with any practical consequences of importance for the amelioration of slavery, it appears to me expedient to pass such an Act as an isolated measure at any time, and especially under the existing circumstances of India. The objections against an isolated measure of this character at all times, and especially at the present moment, might even be set up against some small degree, at least, of practical benefit arising to slaves in India, differing as their condition does, in essential particulars, from those forms of slavery which have been principally the subject of attention and reprobation in England.

Neither, I think, ought we to lose sight of the consideration, whether in taking away (by a side wind as it were, and through the medium of the criminal law) from the master the only legal means in his power of compelling his slave to work, we ought not, in justice, to grant him compensation. I cannot help dissenting from my friend Mr. Cameron's opinion (for it is by no means that of the Commission), that any work which the slave might possibly perform, but which he would not perform unless he were compelled by moderate correction, is totally valueless; and that the power of moderate correction will not have the slightest effect in

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in increasing the diligence, obedience or respect of the slave; although the benefits to which the slave may look forward, in the event of age, sickness or famine, as the implied, though not the legal condition of his service, may protect such opinion from any imputation of being a paradox. But, although such an opinion may be well founded, is a different view of the subject so unreasonable, as that we must not expect that it will be generally entertained by the masters of slaves, and will create in the country a general opinion against the justice of our proceedings? It may be observed, moreover, that if coercion will not produce valuable labour, coercion will not be generally practised, and that therefore there is less occasion for a new law.

But what appears to me the strongest reason against passing the Act at the present moment is, that the investigations which have already taken place before the Law Commission, show what a very imperfect knowledge of the subject of slavery in India was in the possession of those individuals who were the authors of the recommendation, which we are now directed to transfer into an Act. Our knowledge on the subject is still very imperfect, especially as regards the Presidency of Madras. Upon the important considerations of what will be the precise and the whole practical operation of the Act, and what feelings it will occasion among the native community, I do not think that we have the materials before us necessary for forming the most correct judgment.

IV. It will be for others more conversant with official forms and usage to say whether the Court of Directors have intended on the present occasion to leave any discretion in our hands. At all events, the directions which we have received, indicate a very strong opinion upon the subject with the home authorities. It, therefore, will probably not be thought advisable to delay the execution of the directions we have received, unless the Governor-general and Members of Council, and perhaps also the government of Madras and Bombay, are unanimously of opinion that the publication of the Act ought to be postponed.

Calcutta, (signed) *A. Amos.*
1 April 1839.

But for the peremptory tone of the order conveyed to us by the Honourable Court's letter of the 26th September last, I should have no hesitation in recording my concurrence in what Mr. Amos has stated with so much clearness and force against the immediate passing of the proposed Act. Looking, however, to that letter, I fear that no discretion is allowed us, and that the Act, objectionable as I regard it in many respects, and calculated in indiscreet hands to work incalculable mischief, must be promulgated.

3 April 1839. (signed) *T. C. Robertson.*

Consultations. 8 April 1839. No. 18.
On the Slavery Act.

Minute by the Honourable *W. W. Bird*, Esq., dated 5 April 1839.

The orders of the Court merely are, that we should lose no time in passing an enactment to the effect stated in Note (B.), which is appended by the Law Commissioners to the Penal Code, namely, "That no act falling under the definition of an offence should be exempted from punishment because it is committed by a master against a slave."

But it appears that the draft Act submitted for this purpose by the Law Commissioners, with their Report of the 1st of February last, goes much further, and will have the effect of depriving the master, with respect to his slave, of that power of moderate correction which he can legally inflict, with sufficient cause, on all the rest of his family.

This I do not think could have been intended, and is manifestly objectionable, inasmuch as it raises the condition of the slave above that of others who are not slaves in the same domicile, renders him entirely independent of his master by whom he is fed and clothed, and assures him of impunity, however gross his negligence, wilful his disobedience, or inexcusable his misconduct.

Such a law we are not required by the Court's instructions to pass, a law which is declared by Mr. Robertson to be calculated, in injudicious hands, to work incalculable mischief. If an Act, such as I conclude the Court contemplated, cannot be framed without releasing the slave from that control necessary for the preservation

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preservation of good order and sobriety of conduct, it would be advisable, I think, to abstain from legislation at present, and refer the question for the further consideration of the home authorities.

(signed) *W. W. Bird.*

Fort William, Legislative Department, 8 April 1839.

Consultations. 8 April 1839. No. 19.

DRAFT of Act submitted by the Law Commission, with certain Amendments made by the Council of India.

IT is hereby declared and enacted, that whoever assaults, imprisons, or inflicts any bodily injury upon any person being a slave, either by way of punishment or of compulsion, or in the prosecution of any purpose, or for any other cause, or under any other pretext whatsoever, under circumstances which would not have justified such assaulting, imprisoning, or inflicting bodily injury upon such person if such person had not been a slave, is liable to be punished by all courts of criminal judicature within the territories subject to the government of the East India Company, as he would be liable to be punished by such courts if such person had not been a slave.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

(No. 183.)

From *J. P. Grant*, Esq., Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-general.

Consultations. 8 April 1839. No. 20.

Sir,

Legislative Department.

I AM directed by the Honourable the President in Council to acknowledge the receipt of Mr. Torrens's letter of the 18th of December last, enclosing a despatch from the Honourable Court, dated the 26th September 1838 (Legislative Department, No. 15), and to forward to you, for the information of the Right honourable the Governor-general of India, copies of the papers noted on the margin.

To Secretary to the Indian Law Commissioners, dated 7 January 1839.
Minute by the Hon. A. Amos, Esq., dated 4 Feb. 1839, with its Enclosure.
Letter from the Law Commissioners, dated 1 Feb. 1839, with its Enclosures.
Minute by the Hon. Mr. Amos, dated 1 April 1839, and Mr. Robertson, dated 3 April 1839.
Minute by the Hon. Mr. Bird, dated 5 April 1839.
Draft of Act, dated 8 April 1839.

2. On the receipt of Mr. Torrens' letter, the Law Commissioners were requested to report whether the law, as now actually in force over every part of British India, is or is not such as to make the passing of a law of the nature directed by the Honourable Court requisite, in order that the intention of the home Government may be carried into complete effect. To this question the Law Commissioners answered in the affirmative; and as directed to do in case they should so answer, they submitted the draft of an Act of the nature directed by the Honourable Court. In doing so, they observed that "an express enactment or declaration of the Legislature seems highly desirable," to determine the existence or non-existence in a master of the right of moderately chastising his slave for a fault. But observing that the question of which determination is the more expedient had not been submitted to them, and that some of them did not feel prepared to express, at this stage of the inquiry into slavery, any opinion upon that point, they contented themselves (with the exception of Mr. Cameron, who sent up a separate minute upon this point) with giving a simple reply to the legal question put to them, and the grounds of their opinion thereon.

3. On taking the draft thus submitted into consideration, it was determined to add a few words for the purpose of making its whole intent more apparent, as explained in Mr. Amos's minute of the 1st April 1839, with which addition it is proposed to read it for the first time if it be determined immediately to pass any Act to the effect of this draft Act.

4. But the question whether any such law should now be promulgated, or whether nothing should be done in the matter of slavery in India before an

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answer may be received to a reference to be made to the Honourable Court upon the subject, has been the subject of anxious deliberation with the President in Council. On this point I am directed to request that the Right honourable the Governor-general may be referred to the minutes recorded by Mr. Amos, Mr. Robertson and Mr. Bird, dated respectively the 1st, the 3d, and the 5th of April.

5. Upon this question the President in Council begs to be favoured with the opinion of the Governor-general.

6. I am directed to suggest, for the consideration of his Lordship, that perhaps it may be practicable for his Lordship to report to the Honourable Court, in time for the next overland mail from Bombay, the result of this reference to him. The Report of the Law Commissioners, dated the 1st of February last, with its accompaniments, including an Appendix of Evidence taken by them on the subject of slavery in India, has already been submitted to the Honourable Court by the overland mail of February, with a despatch from the President in Council, dated the 11th of February last, a copy of which was forwarded to you with my letter of the same date. The minutes above referred to, the amended draft, this letter, and his Lordship's reply, will remain to be submitted to the Honourable Court.

7. Amongst the papers sent herewith is the copy of the Report of the Indian Law Commissioners required by your letter of the 7th ultimo.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Fort William, 8 April 1839.

Consultations. 27 May 1839. No. 2.

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-General, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India, Fort William.

Sir,

Legislative.

I AM directed by the Right honourable the Governor-general to acknowledge the receipt of your letter, No. 183, dated the 8th ultimo, with its enclosures, on the subject of the Slavery Act, and in reply to transmit for submission to the Honourable the President in Council, a copy of his Lordship's minute this day recorded, containing his sentiments on the subject; and with reference to the 14th paragraph of that minute, to suggest that his Honour in Council will call for a note on the state of the law and practice of the traffic in children.

2. A copy of his Lordship's minute, as also copies of your letter under acknowledgment, and of the papers alluded to in the 6th paragraph of it, have been forwarded to the Honourable Court by the steamer which will sail from Bombay on the 20th instant, in a despatch in this department, No. 1 of 1839, a copy of which is enclosed for the information of the Honourable the President in Council.

I have, &c.
(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India with the Governor-general.

Simla, 6 May 1839.

Consultations. 27 May 1839. No. 3. Enclosure.

Proposed Act affecting Slaves.

MINUTE by the Right honourable the Governor-general.

1. THE Honourable Court have by their despatch of the 26th of September 1838, explicitly desired that the Governor-general of India in Council should lose no time in passing an enactment, to the effect "that no act falling under the definition of an offence should be exempted from punishment, because it is committed by a master against a slave."

2. At my suggestion the Law Commissioners were called upon to report whether the intention of the Home Government was not already carried into complete effect by the practice of our criminal courts: the answer of the Commissioners was unfavourable to this view of the case, and the draft of an Act to the effect proposed has been accordingly submitted; but doubts upon other grounds have been thrown upon the policy of passing any such law. Minutes on the subject of high

high authority have been recorded, and in the end the President in Council has requested my opinion.

3. It is observed by the Law Commission, that "the law in some parts of British India" is already in conformity with the intentions of the home Government; in other parts it is not, and in other parts it is in such a state that no one "can say with certainty whether it is or is not in conformity with those intentions."

4. In truth, the law in this respect partly depends upon the opinions of those by whom it is administered, and is liable in some degree to fluctuate with a change of functionaries. About half of the judicial functionaries of the lower provinces have given an opinion that they should make no difference between the treatment of a slave and a freeman. In the upper provinces the Nizamut Adawlut have affirmed without dissent that no distinction is recognised between the slave and the freeman in criminal matters; and in Madras and Bombay there is the same uncertainty, and the law cannot be said to be altogether in conformity with the intentions of the Honourable Court. It is cited as an instance of the uncertainty and inconsistency of the law, that the right of moderate correction in the matter is recognised by the magistrate in Southern Cuttack, whilst in Central Cuttack the judgment upon every complaint by a slave, whether substantiated or not, has been, "We do not recognise slavery, you may go where you please, and if your master lays violent hands upon you, we will punish him."

5. Even in Malabar, where the caste of Churmurs, or rustic slaves, have been said to live in the lowest stage of servility and degradation, it was stated by the magistrate, as far back as 1835, that "slaves complaining against their masters for acts of violence, receive equal protection with all other castes; they now readily resort to the magistrates' cutcherry, where prompt attention is given to their complaints, and the parties offending against them are immediately punished, without any reference to their relative situations." I am aware that an entirely similar doctrine has not been held even in the neighbouring district of Canara; but it is altogether clear that the abuse of violent punishment is not anywhere legal. Even the authorities which allow any right of correction do not place it higher than that which a parent has over a child, or a master over a scholar or apprentice; and the Hindoo law equalizes the rights which a man has in this respect over his wife, his son, his slave, and his younger brother of whole degree.

6. With all this, however, and with whatever degree of equality and humanity in practice, the law as it stands is uncertain; and the remedy indicated by the Law Commissioners is an enactment, either declaring that the legal right of moderate correction does, or that it does not exist in the master; and as the question has not been submitted to them, the Commissioners collectively decline to discuss which of those two doctrines it would be most expedient to promulgate, and they accordingly, in obedience to the directions issued to them, submit the draft of an Act for consideration, by which the right of moderate correction is denied.

7. I do not approve of the law in the form proposed; I think that it attempts to define and to restrict too closely, and I should prefer the more general form of Act as originally proposed by the former Law Commissioners in their Note (B.) on the draft of Penal Code, and as approved by the Honourable Court in their despatch now before us.

8. If the matter, however, were wholly left to my discretion, I should very much prefer not to legislate at all for the purpose of regulating the conduct of masters towards their slaves. All such regulation implies a recognition of a state of slavery, towards the absolute extinction of which I am satisfied that by the mere force of time, of civilization, and of the lenient and well-understood principles and practice of British administration, great advances are in progress. If we in this manner formally recognise the state of slavery, we shall incur a great danger of directly defeating our own intentions, and of becoming parties to the maintenance of that state by being led into different measures for the regulation of the rights and obligations incident to it. In the case with which we have now to deal, it would seem impossible not to accompany the enactment of such a law as is proposed, with provisions giving to masters some easy legal means of obtaining the due services of their slaves. A summary jurisdiction is already given to magistrates in the Bengal Presidency (by Regulation VII. 1819),

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1819), for the enforcing the duties of the relation of masters and free servants and labourers; and the masters of slaves might justly require that some law similar in principle should be passed for the fair protection of their rights; measures of such a character would, however, I apprehend, be found highly inconvenient and embarrassing. At present the hold of masters over their slaves is generally of the most loose description, the leaning of our courts against the admission or support of a condition of bondage is notorious, and of powerful effect; there is no course of legal proceeding against an absconding slave except by a regular civil action, on the inefficacy of which the former Law Commissioners have justly and forcibly observed. The attachment and continued labour of the slave is secured only by habit, by fixed national usage and opinion, and by the sure means of good and moderate, and even indulgent and favourable treatment; these circumstances furnish, to my mind, arguments of exceeding strength against a legislation which must revive and, in some manner or other, confirm rights now rapidly losing all their force without any ostensible interference of the government.

9. I would not enter into a discussion upon the degree to which, in the present condition of Indian society, all slavery is excluded from amongst the Mahomedans by the strict letter of their own law, or upon the degree to which the Mahomedan law and usage have superseded the Hindoo law of slavery; but it is, I think, from the causes above explained, sufficiently clear, that the abhorrence to slavery entertained by the English functionary is gradually establishing an administration of the law under which all slavery must fall. We may be certain that, with the lapse of time, that abhorrence will only increase and be diffused, and that any inconsistencies now existing in legal practice must be before long removed by uniform interpretations in favour of the slave.

10. On the other hand, I admit the strong general arguments which may be urged against any permission of laws of uncertain construction and inconsistent administration, and I do not at present see reason to anticipate, as far as regards this presidency, serious dissatisfaction or other inconvenience from the adoption of the proposed remedy; and if in the opinion of others it were likely to be productive of good, and if the law were drawn and could be passed without injustice to masters, simply in the more general form mentioned by the Honourable Court, and so as not to bear the construction of at all sanctioning a state of slavery, I should be prepared, in deference to the Honourable Court, to give my assent to it. I must hesitate, however, upon doing so against the declared opinion of Mr. Amos, and with the expression before me of doubts upon the subject by Mr. Bird, accompanied by the statement by Mr. Robertson, that, in his opinion, the law in question would be objectionable, and calculated in indiscreet hands to work immeasurable mischief.

11. We have been directed by the Court to lose no time in passing a law to the effect proposed; but surely this direction is in its very terms compatible with a due discretion; and before the law could be passed, I think that we are justified in asking for the opinion of the Law Commission on its expediency, and bound in common prudence to consult the governments of Madras and Bombay upon the effects which it may have within those presidencies. I propose accordingly, that this course be now in the first instance taken, and in the meantime I shall forward copies of all the minutes by the steam mail, under despatch, for the further observations of the Honourable Court.

12. I have said that the inclination of my own mind is against legislation on the subject of slavery, for reformation is working its own way, and a direct interference may frustrate our own objects, while it may in some places, and from the absence of any very definite meaning in India to the term "slave*," excite alarm and counteraction; and yet there is one class of abuse as connected with this subject, to which the attention of the government and of the Law Commission may very properly, in my opinion, be directed.

13. The subservience of a dancing girl to her keeper is, perhaps, not greater in

* I have used this term not only in deference to the distinction which has been drawn by Mr. Cameron between slavery in the East and slavery in the West Indies, but because (as I understand) such terms as "Fidoee," "Gholam," "Rhanazad," and others, are very generally translated by the word "slave," though they may be often rather applicable to a state of honourable and connected dependance than to one of bondage.

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in India than that of the young prostitute to the panders of Paris and of London; and no magistrate in these days would construe it to be slavery, or in any way sanction the right of control which is assumed. Yet the power over these girls is acquired by purchase; and from correspondence with Major Sleeman and others, I am led to believe that the traffic in children for the supply of the zunana and the brothel, is a source of extensive crime, upon the temptation to which gangs, even of systematic murderers, as appears by the published Report upon the Megpunna Thugs, have been founded. All crime, indeed, by which the possession of the child is obtained, is already punishable by law; but it is not easily detected, and it seems probable that far too much of facility exists in the traffic which follows upon the possession.

14. I shall be very glad if the Law Commission, or if the Secretary of Government at Calcutta in the legislative department, were called upon for a note on the state of the law and practice on this subject. I am told that it was brought under discussion before the government a few years ago, soon after a great inundation in Cuttack, when from the inability of parents to support their families, the extensive sale of children had attracted general notice. The purchase of children at that time was very generally an act of charity, and was considered to be legal and commendable, but the legality of such a traffic in ordinary times must, in my opinion, lead to evils more than counterbalancing its occasional good.

(signed) *Auckland.*

Simla, 6 May 1839.

(No. 222.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to the Indian Law Commissioners; dated 27 May 1839.

Gentlemen,

With reference to your Report on the present state of the criminal law in India relating to slaves, the Honourable the President in Council requests that you will collectively favour him with your opinions on the following points:

1. Whether or not it is expedient now to pass any law to the effect of that directed by the Honourable Court of Directors, in their despatch of the 26th September 1838, No. 15, whereof an extract accompanied my letter to your address of the 7th January last.

2. The Indian Law Commissioners were in the first instance desired to report whether the law, in its present state, did not provide all that was intended by the Court of Directors, who, in their despatch, desired the government of India to pass an Act to the effect of a provision suggested in Note (B.) of the Penal Code, viz. "Whatever is an offence when committed against a freeman, shall also be an offence when committed against a slave." In answer to the question put to them, the Law Commissioners have reported that the law in its present state does not provide for every thing which the terms cited from the Penal Code would include. The grounds of their opinion will be seen from the accompanying copy of their Report, dated the 1st February last. It would appear that the Commissioners considered that the present criminal law of the country made one difference between slaves and freemen, but no other, viz. that a master might

(Nos. 341, 342.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to the Chief Secretary to the Government of Fort St. George, and Secretary to the Government of Bombay; dated 27 May 1839.

Consultations. 27 May 1839. No. 4.

Sir,

In consequence of the receipt of a despatch from the Honourable the Court of Directors, on the subject of slavery in India, the Honourable the President in Council has had under his consideration a proposed law (a copy of which accompanies this letter), declaring and enacting that any assault committed, or personal injury inflicted on a slave shall be punishable in the same manner as if such assault had been committed, or personal injury inflicted on a free person.

(signed) *J. P. Grant,*
Officiating Secy to Govt of India.

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might justify inflicting moderate correction on a slave for certain faults.

3. The Right honourable the Governor in Council is requested to favour the government of India with his opinion on the following points:

4. First. Whether or not it is expedient now to pass any special law to the above effect.

5. The President in Council remarks on this point, that, as will appear from the perusal of Note (B.) of the Penal Code, much variance in the practice of magistrates exists as to recognising the right of moderate correction by a master of his slave. It is desirable that doubts upon this subject should be removed, if it can be done without the hazard of creating greater inconveniences.

Upon the expediency of formally abolishing the power of a master to correct his slave in any case, it may be desirable to consider whether it would be regarded with justice, or, in fact, by any considerable portion of the community, as an infringement of rights and a deterioration of property through the medium of the criminal law. It is also to be considered, as the regulations for the punishment of servants do not appear to be applicable to slaves, whether, regarding such benefits as the slave may derive from his situation, it is proper that he should be placed in a much more independent condition than a servant, and be exempted from punishment of every kind, from whatever authority, and on whatever occasion.

6. It may deserve inquiry whether an objection applies to any special law regulating the conduct of masters towards their slaves (especially if it be thought proper that the law should contain provisions for enforcing by a magistrate the obedience of slaves in like manner as servants), as implying a recognition of a state of slavery, towards the absolute extinction of which, by the mere force of time, of civilization, and of the lenient and well-understood principles and practice of British administration, great advances are in progress. It has been observed, that if government in this manner formally recognise the state of slavery, it will incur a great danger of directly defeating its own intentions, and of becoming parties to the maintenance of that state, by being led into different measures for the regulation of the rights and obligations incident to it. It appears to be very important to compare, on the one hand, the inconveniences to which it may be thought the law will give rise, not merely such as may necessarily result from it, but also such as it may be likely to produce if administered indiscreetly, or if made a plausible ground for discontent and excitement, and, on the other, the practical benefits which the law may be expected to confer. As to this, it is to be observed that the real operation of the law is much more limited than would at first sight appear, from the terms of the provision suggested in Note (B.) of the Penal Code, which provision, it must be recollected, was intended by the Law Commissioners to be applied to the whole criminal law, and not merely to supply a particular defect in the existing law; it was made to prohibit immoderate as well as moderate correction, the former of which is already provided against by the existing law. It may deserve consideration whether the operation of the law, in simply prohibiting moderate correction, will not, in fact, be still more limited by the general practice of magistrates upon complaints of the nature in question, which is at present to lean in favour of the slave. And regarding the effects of usage, the distance of tribunals, the difficulty of establishing a charge of moderate correction, the trifling nature of the punishment which could with justice be inflicted on a master for moderately correcting his slave, (it being understood that, according to the existing law, the master would be punishable if he corrected his slave immoderately, or even moderately, except for negligence, disobedience, or disrespect,) it may be proper to inquire whether the Act would be likely to have any practical effect of a general or extensive nature.

7. Without entering into a discussion upon the degree to which, in the

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the present condition of Indian society, all slavery is excluded from amongst the Mahomedans by the strict letter of their own law, or upon the degree to which the Mahomedan law and usage have superseded the Hindoo law of slavery, it must be sufficiently clear that the abhorrence of slavery entertained by the English functionary is gradually establishing an administration of the law under which all slavery must fall. It may be certain that, with the lapse of time, that abhorrence will only increase and be diffused, and that any inconsistencies now existing in legal practice must be before long removed by uniform interpretations in favour of the slave.

8. Second. Whether, supposing a law of the nature proposed to be determined on, it could with justice be passed without compensation to the owners of slaves; and, generally speaking, what compensation would be equivalent to the practical change which such a law would effect in the value of a slave. Also, whether it would be indispensable that, if the power of moderate correction be taken away, some provisions for enforcing obedience in the nature of the regulations or bye-laws for enforcing the obedience of servants should be enacted.

9. Third. Supposing a law of the nature proposed to be passed, whether it would be expedient to pass it somewhat in the form of the appended draft, Act (A.), which has been slightly altered from the draft prepared by the Law Commissioners, or in a more general form, as in the appended draft, Act (B.), which follows more nearly the words of the Honourable Court's despatch. It has been objected to the draft (A.), that it attempts to define and to restrict too closely. On the other hand, as will be seen from the Report of the Law Commissioners, the only legal effect of the law would be to take away the right of moderate chastisement for misconduct, such as may be exercised by a parent over his child, or a master over his apprentice. It may therefore deserve consideration whether the Act, in the more general form, would import a great deal more than its real operation; and though its terms might be very proper in a code which embraced the whole criminal law, they would be inappropriate in an Act which contained only a very partial modification of the existing law. It might be observed that the use of such general terms would have the effect of representing the existing law as much more defective than it really is, and of introducing much greater changes in the usages and rights of the native community than is either intended or effected.

I have, &c.

Fort William,
27 May 1839.

(signed) *J. P. Grant,*
Officiating Secretary to Government of India.

Draft Act (A).

It is hereby declared and enacted, that whoever assaults, imprisons, or inflicts any bodily injury upon any person being a slave, either by way of punishment or of compulsion, or in the prosecution of any purpose, or for any other cause, or under any other pretext whatsoever, under circumstances which would not have justified such assaulting, imprisoning, or inflicting bodily injury upon such person if such person had not been a slave, is liable to be punished by all courts of criminal judicature within the territories subject to the government of the East India Company as he would be liable to be punished by such courts if such person had not been a slave.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

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DRAFT ACT (B).

IT is hereby declared and enacted, that no act which would be an offence if done against a free person shall be exempted from punishment because it is done against a slave.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 223.)

Consultations. 27 May 1839. No. 5. Legislative Department.

From *J. P. Grant*, Esq., Officiating Secretary to the Government of India, to the Indian Law Commissioners.

Gentlemen,

As bearing upon the general question of slavery in India, to which my letter to your address of this date, No. 222, relates, I am directed by the Honourable the President in Council to request that you will prepare and submit for the consideration of government, a note of the present state of the law and practice in India relative to the sale of children.

2. It has been observed to the President in Council that the subservience of a dancing girl to her keeper is perhaps not greater in India than that of the young prostitute to the panders of Paris and of London; and no magistrate in these days would construe it to be slavery, or in any way sanction the right of control which is assumed. Yet the power over these girls is acquired by purchase; and it is suspected that the traffic in children for the supply of the zenana and the brothel is a source of extensive crime, upon the temptation to which gangs even of systematic murderers, as appears by the published Report upon the Megpunna Thugs, have been founded. All crimes, indeed, by which the possession of the child is obtained, are already punishable by law; but it has been observed that such crimes are not easily detected, and that it seems probable that far too much of facility exists in the traffic which follows upon the possession.

3. The opinion and suggestions of the Indian Law Commissioners are requested on this subject in a separate Report; as it appears to the President in Council to be a question which, supposing it to require legislation, might be conveniently legislated upon without reference to the question to which my separate letter of this date relates.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Council Chamber, 27 May 1839.

(No. 359.)

Consultations. 27 May 1839. No. 6. Legis. Department.

From *J. P. Grant*, Esq., Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-General.

To the Chief Secretary to the Government of Fort St. George, Secretary to the Government of Bombay, and Indian Law Commissioners, dated 27 May 1838.
To the Indian Law Commission, under the same date.

Sir,

WITH reference to your letter, dated the 6th instant, I am directed by the Honourable the President in Council to forward to you, for the information of the Right honourable the Governor-general, copies of the letters addressed on the subject of slavery in India, as noted in the margin.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Fort William, 27 May 1839.

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(No. 192.)

From *J. C. C. Sutherland*, Esq., Secretary to the Indian Law Commission, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India, Legislative Department.

Consultations. 24 June 1839. No. 54.

Sir,

I AM directed by the Law Commissioners to acknowledge the receipt of your letters, dated 27th May, Nos. 222 & 223, and to request that you will inform his Honour in Council, that the subjects referred to the Law Commission in both these letters are now under their consideration, with a view to their general Report upon slavery in India.

2. As it will be shortly ready for presentation, the Law Commissioners submit that the most convenient and satisfactory made of accomplishing the wishes of his Honour in Council will be to proceed with that Report.

I have, &c.

Indian Law Commission, 13 June 1839.

(signed) *J. C. C. Sutherland*, Secretary.

(No. 627.)

From *H. Chamier*, Esq., Chief Secretary to the Government of Fort St. George, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India.

Consultations. 2 Sept. 1839. No. 11.

Sir,

WITH reference to your letter of the 27th May last, No. 341, I am directed by the Right honourable the Governor in Council to transmit, for the information of the Honourable the President in Council the accompanying copy of a letter from the acting register of the Sudder Udalut, submitting the sentiments of that court on the several points referred to in your letter under reply on the subject of slavery in India, and to intimate that his Lordship in Council entirely concurs in the opinions expressed by the judges, and considers it will be preferable not to legislate at all in respect to slavery until the whole question in all its bearings has been fully considered.

Judicial Department. 17 July 1839. No. 130.

I have, &c.

Fort St. George, 30 July 1839.

(signed) *H. Chamier*, Chief Secretary.

(No. 130.)

From *T. H. Davidson*, Esq., Acting Register to the Sudder Udalut, Fort St. George, to the Chief Secretary to Government.

Consultations. 2 Sept. 1839. No. 12. Enclosure.

Sir,

1. I AM directed by the judges of the Sudder Udalut to acknowledge the receipt of the extract from the minutes of consultation, under date the 2d July 1839, No. 530, forwarding copies of a letter, dated the 27th May last, from the Officiating Secretary to the Government of India, and of the papers which accompanied that communication on the subject of slavery in India, with reference especially to a despatch from the Honourable the Court of Directors, desiring the government of India to pass an Act to the effect of a provision suggested in Note (B.) of the Penal Code, and requiring the Court of Sudder Udalut to submit their sentiments on the several points therein referred to.

Sudder Udalut.

2. The first question on which the sentiments of this court are required by government is, "Whether or not it is expedient now to pass any special law to the effect of that of which a copy is annexed, declaring and enacting that any assault committed or personal injury inflicted on a slave, shall be punishable in the same manner as if such assault had been committed or personal injury inflicted on a free person."

3. With reference to the observation in paragraph 5, of the letter from the Officiating Secretary to the Government of India, dated 27th May 1839, that much variance "in the practice of magistrates exists as to recognising the right of moderate correction by a master of his slave," the judges of the Sudder Udalut remark that the circular order of the Foujdaree Udalut of the 27th November 1820 has laid down a uniform course of procedure in this respect, and that inasmuch as no

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no specific penalty is prescribed in the Regulations for assaults exceeding the jurisdiction of the magistrate (under Sect. 32, Regulation IX. of 1816), the criminal judge is required under the provisions of Sect. 7, Regulation X. of 1816, as illustrated by the circular order of the 28th January 1828, to be guided, in such cases, by the Mahomedan law, which does not make a master liable to punishment for correcting his slave in a lawful manner for an offence incurring discretionary punishment under that law.

4. "Regulations for the punishment of servants" for breach of duty, "or departure from proper demeanor," have been enacted in Sect. 18, Regulation XII. of 1827, in the case of Bombay; but there are no such provisions in force under this presidency, where therefore the comparison between the condition of a servant and that of a slave exempted from correction by his master cannot be made.

5. In the Note (B.) to the Penal Code, it appears to be argued, that the masters of slaves, in these territories, exact service by the use of violence, and that the same of reciprocal benefit is not brought into operation under the system of slavery there prevailing.

6. But the information contained in the official reports on this subject does not appear to warrant this conclusion. It is certain that the ill-treatment of slaves by their masters is not general, if indeed it exists at all, to any great degree; and as a motive in the nature of that adverted to by the Law Commission, as not existing, it is observable that the slave is fed, housed, and clothed by his master. The enactment of a Penal Code abrogating all reference to the Mahomedan law will set aside the rule above mentioned; and under the general provisions for the punishment of assaults, the masters of slaves will by the operation of that "abhorrence of slavery," noticed in the letter from the Officiating Secretary to the Government of India, be deprived of any power which they may now exercise of enforcing obedience by personal correction.

7. Some interval must elapse before the promulgation of a Penal Code; the subordinate functionaries, whose opinions have been required upon that framed by the Law Commission, have not yet all sent in their opinions, and the judges of this court have yet to commence the "laborious revision" of this code imposed upon them, as well as to digest the opinions laid before them. The occupation of their time and attention by their proper judicial duties leaves little leisure for this arduous undertaking.

8. But it does not appear to the Court of Sudder Udalut that in the meantime any special enactment on the subject is required. The observations in the letter under consideration show that there are grave reasons for questioning the expediency of any special legislation on the point in question; and that any practical good, commensurate with the danger of evil, would result from enacting the proposed law, cannot, in the opinion of the Judges of the Sudder Udalut, be expected.

9. With reference to the second question in paragraph 8, it appears to the judges that no satisfactory conclusion as to the claim for compensation could be formed, or estimate as to the quantum of compensation be made, without local inquiries, into which it would not be proper for this court to enter without the special authority of the government.

10. The provisions in the Bombay Code for the punishment of servants would be nugatory in the case of slaves, from whom a fine could not, consistently, be levied, and to whom "ordinary imprisonment without labour" for 14 days would be rather a boon than a punishment.

11. If a law of the nature proposed shall be determined upon, there can, in the opinion of the judges of the Sudder Udalut, be no doubt that the draft Act (A.) would be preferable to (B.), for the reasons stated in paragraph 9, of Mr. Secretary Grant's letter.

12. The latter Act would, in the opinion of the Sudder Udalut, be calculated to occasion serious misconception.

I have, &c.

(signed) *T. H. Davidson,*
Acting Register.

Sudder Udalut Register's Office,
17 July 1839.

(A true copy.)

(signed) *H. Chamier,* Chief Secretary.

No. V.
Powers of a Master over his Slave.

(No. 2037 of 1839.)

Consultations. 2 Sept. 1839. No. 13.

From *L. R. Reid*, Esq. Acting Chief Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India in the Legislative Department.

Sir,

In acknowledging the receipt of your letter, dated the 27th of May last, No. 342, enclosing the draft of a proposed Act, providing that a personal injury or an assault committed on a slave shall be punishable in the same manner as if Committed on a free person, I am directed by the Honourable the Governor in council to transmit to you, to be laid before the Honourable the President in Council, copy of a letter from the Register of the Sudder Foujdaree Adawlut, dated the 20th ultimo, reporting the opinion of the judges of that court, that there is no necessity to pass a special law for the protection of slaves under this presidency, since the laws at present in force are applicable to them, and an offence which would be punishable when committed against a free man would not be exempt from punishment if done against a slave.

Judicial Department. 1.

I have, &c.
(signed) *L. R. Reid*,
Acting Chief Secretary to Government.

Bombay Castle, 5 August 1839.

(No. 1254 of 1839.)

Consultations 2 Sept. 1839. No. 14. Enclosure.

From *P. W. Le Geyt*, Esq. Register of the Sudder Foujdaree Udalut at Bombay, to *J. P. Willoughby*, Esq. Secretary to Government, Bombay.

Sir,

I am directed by the judges of the Sudder Foujdaree Udalut to acknowledge your letter, No. 1675, dated the 3d instant, giving cover to a despatch from the Officiating Secretary to the Government of India, on the subject of a proposed law, relative to a personal injury or an assault committed on a slave, and requesting their opinion on the same.

2. In reply, I am instructed to observe that there does not appear to be any necessity to pass a special law for the protection of slaves throughout the zillahs of this presidency, as the law in force is as applicable to them as to free men; and no offence done against a free man, is, by the Bombay Code, exempted from punishment, because it is done against a slave.

3. As the power of a master to correct his slave has never been admitted by our Code, the general practice of the magistrates has been against it, although exceptions are quoted in the Note (B.) to the Penal Code; and it is not considered that a strict enforcement of this rule would be looked upon by the community as an infringement of right, or a deterioration of property; for masters are also protected against the misconduct of their slaves, as the Regulations for the punishment of servants, contained in Section 18, Regulation XII. of 1827, have been ruled by this court, under date the 4th November 1830, to be applicable to slaves.

I have, &c.
(signed) *P. W. Le Geyt*,
Register.

Bombay Sudder Foujdaree Udalut, 20 July 1839.

(True copy.)
(signed) *L. R. Reid*,
Acting Chief Secretary to Government.

Consultations. 2 Sept. 1839. No. 15.

Minute by the Honourable *A. Amos*, Esq., dated 27 August 1839.

The Governor-general expressed a wish that the governments of Madras and Bombay should be consulted on the subject of the expediency of passing the Slavery Act, in order that we might form a more satisfactory judgment as to the propriety of delaying to conform immediately to the instructions for passing the Act, received from the Honourable Court of Directors. In pursuance of the

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recommendation of the Governor-general, advices upon the subject have been obtained from Madras and Bombay. Nothing remains but to forward the papers to his Lordship and to the Home Authorities.

It will be observed, that the Bombay government do not give us any opinion of their own, but it forwards, without comment, the opinion of the Sudder Court of that presidency. The Bombay Sudder Court think that there is not any necessity to pass the special law. They further observe, that such a special law would not work injustice or inconvenience, nor call for compensation, for a reason (the only one assigned) which certainly does not apply to the other presidencies, viz. that in Bombay the magistrate will enforce the services of a slave.

It may be remarked, that the construction given to Sect. 18, Reg. XII. of 1827, of the Bombay Code, by the Bombay Sudder Court, is at least open to very grave doubt in point of law. The operation of this construction, in cases decided with reference to it, seems to call for inquiry.

It is observed by the Bombay Sudder Court, that the power of a master to correct a slave is not recognised by the Code, nor by the general practice of magistrates. This, as to immoderate correction, is the established law of the country, and practice of magistrates over the whole of India. The only question upon the subject regards moderate correction for misconduct. According to the Bombay judges, this also is prohibited by the Bombay Code, because not admitted by it. I think it would be satisfactory to ask the Bombay judges, whether they hold, upon the same grounds, that it is punishable in a master to give moderate correction to a servant, young or old, not being a slave? And whether, in point of fact, these cases of moderate correction by masters are not of a nature that they seldom, if ever, are brought before a magistrate? With regard to the "general practice" spoken of, I should like the Bombay judges to be asked how many cases of moderate correction they adverted to as constituting such general practice.

The Madras government and Sudder Court both concur with the Supreme Government in thinking that there are grave reasons for questioning the expediency of the proposed law; and they say that no practical good, commensurate with the danger of evil, can be expected to result from the proposed law.

With regard to the question of compensation, it is the opinion of the Madras authorities that it cannot be satisfactorily disposed of without further local inquiry. This alone is a strong reason for not passing the Act immediately.

The Madras authorities consider that a Regulation similar to that in the Bombay Code would not answer for the Madras presidency, either as regards servants or slaves, but more particularly as regards slaves. But if servants are punishable by moderate correction within the Madras presidency, then the judges are not right in saying, that no comparison can arise in the Madras presidency between the condition, in this respect, of servants and of slaves under the proposed Act. I have before observed, that the point is doubtful under the English law, Hawkins laying it down broadly that a master may correct his servant, and the right being recognised by more unequivocal authority in the case of apprentices.

The Madras authorities think that an Act, in the express terms of Note (B.), would be calculated to occasion serious misconception.

(signed) *A. Amos.*

(No. 472.)

Consultations. 2 Sept. 1839. No. 16.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *L. R. Reid*, Esq. Acting Chief Secretary to the Government of Bombay.

Sir,

Legislative Department.

I am directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 2037, under date the 5th ultimo, with its enclosure, and, in reply, to communicate the following observations.

2. His Honor in Council is of opinion, that for the purpose of the Report on Slavery, as well as with respect to the particular Act under consideration, it will be desirable to inquire of the Company's advocate at Bombay, whether, in any proceedings for false imprisonment, the Bombay Regulation would amount to a legal

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legal justification, the person imprisoned being a slave, and not under any specific contract of service.

3. It is desirable also to inquire of the judges of the Sudder Foujdary Adawlut, at Bombay, what is the number of cases in which the Regulation has been put in force against slaves; and whether, under the Bombay Regulations, a master punishing a servant (not being a slave), young or old, by moderate correction, for gross negligence or misconduct, would be punishable as for an assault.

4. With regard to the "general practice of magistrates," there is no doubt that, as regards immoderate correction, or even moderate correction without fault, every kind of law, and the universal practice of magistrates throughout India, is in favour of the slave. What his Honor in Council particularly desires to know is, whether the Sudder Foujdary Adawlut mean that the general practice applies to moderate correction for negligence or misconduct. If such be the case, he is further desirous of being informed of the number of cases in which masters have been punished by magistrates for moderate correction of their slaves.

I have, &c.

Fort William,
2 September 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 471.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general.

Consultations.
2 Sept. 1839.
No. 17.

Sir,

Legislative Dep.

In continuation of my letter, No. 359, of the 27th May last, I am directed by the Honourable the President in Council, to forward to you, for the information of the Right honourable the Governor-general of India, copies of the papers, as noted on the margin, respecting the Slavery Act.

Letter from the Chief Secretary to the Government of Fort St. George, dated 30 July 1839, with Enclosure.
Letter from the Acting Chief Secretary to the Government of Bombay, dated 5 August 1839, with Enclosure.
Minute by the Hon. Mr. Amos, dated 27 August 1839.
Letter to Acting Chief Secretary to the Government of Bombay, dated 2 September 1839.

I have, &c.

Fort William,
2 September 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Consultations.
21 October 1839.
No. 1.

Sir,

Legislative.

I am directed to acknowledge the receipt of your letter, No. 471, dated the 2d instant, with enclosures, respecting the Slavery Act, and to state, in reply, that the Governor-general will await the receipt of the answer of the Law Commissioners to the letter addressed to them by order of the Honourable the President in Council, on the 27th May last, No. 222, before he records any opinion on the papers submitted with your letter under acknowledgment.

I have, &c.

Simla,
30 September 1839.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India,
with the Governor-general.

No. VI.
Oaths and Declarations of Native Witnesses.

—(A.) No. VI.—

CONCERNING THE OATHS AND DECLARATIONS OF NATIVE WITNESSES.

Cons.
10 Nov. 1839.
No. 8.

(No. 468.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legislative.

Sir,

I AM directed by the Honourable the President in Council to request that you will lay before the Indian Law Commissioners, for their information, the accompanying draft of a proposed Act for the examination of native witnesses, which was read in Council for the first time on the 21st ultimo, together with the accompanying copy of a letter from the government of Bengal, dated the 11th of July last, with its enclosures.

2. With Mr. Secretary Macnaghten's letter of the 8th of August 1836, No. 206, papers connected with the question of "the abolition of oaths by prosecutors and witnesses in civil and criminal cases" were referred to the Commissioners for consideration at the proper stage of their proceedings. The Commissioners will observe, that the proposed Act does not abolish judicial oaths. That is a question on which the President in Council, even if he thought the circumstances of the country called for an early decision upon it, would be reluctant to legislate, in anticipation of the expected report of the Commissioners on judicial procedure. The intention of the proposed Act is to retain the substance of an oath, but to do away with certain forms of swearing now in use as respects the generality of witnesses, and to take away from courts the discretion now possessed by them of forcing a witness to make oath in the usual form, which is generally disliked, and often strongly objected to, or of allowing him, as a special favour and mark of distinction, to subscribe instead a solemn declaration, which is not objected to.

3. The judges of the Courts of Sudder Dewanny and Nizamut Adawlut at Calcutta have now come unanimously to the opinion that the present practice is faulty, both in imposing usual forms of making oath which are objected to by many witnesses, and in allowing a distinction to be made at discretion in the case of superior classes of witnesses, whereby the usual forms of making oath are further discredited. It is strongly represented that a failure of justice arises from the existing practice.

4. Under these circumstances, the President in Council, fully agreeing with the court, being aware of no objection to the principle of the proposed modification of the form of making oath, and thinking that upon a question so free from difficulty, and of such practical importance in the daily administration of justice, any delay would be prejudicial to the public interest, has in concurrence with the opinion of the Governor-general prepared the present Draft Act, which has been ordered for reconsideration on the first meeting of the Legislative Council after the 21st day of January next. He directs me to request that you will inform the Commissioners that he does not solicit any report from them upon the subject, or desire that the consideration of it should interfere with the matters at present engaging their attention. But should any objections to the draft occur to them, or should any modifications therein be proposed by them, the observations of the Commissioners will meet with the attentive consideration of the Legislative Council.

5. The Draft Act, as its effect is general, has been submitted for the observations of all the local governments, to be forwarded after communication with the sudder courts.

I have, &c.

Council Chamber,
18 November 1839.

(signed) *J. P. Grant*,
Offg Secy to the Govt of India.

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Oaths and Declarations of Native Witnesses.

Cons.
21 Oct. 1839.
No. 25.

FORT WILLIAM, Legislative Department, the 21st October 1839.

The following Draft of a proposed Act was read in Council for the first time on the 21st October 1839.

ACT No. —— of 1839.

AN ACT for the Examination of Native Witnesses.

1. WHEREAS obstruction to justice has arisen owing to the unwillingness of native witnesses to give testimony in consequence of their being compelled to be sworn upon the Koran or by the Water of the Ganges, or according to other forms which are repugnant to their consciences or feelings;

It is hereby enacted, that no native witness shall be compellable in any court of justice to make oath or declaration otherwise than according to the following effect:

"I solemnly affirm and declare, in the presence of Almighty God, that I will faithfully and without partiality answer make to all such questions as shall be demanded of me touching the matter now before the court, which shall be the truth, the whole truth, and nothing but the truth."

2. And it is hereby provided, that if any person making such affirmation or declaration shall be convicted of having wilfully and falsely affirmed or declared any matter or thing, which, if it had been sworn previously to the passing of this Act, would have amounted to wilful perjury, every such offender shall be subject to the same pains, penalties, and forfeitures to which persons convicted of wilful perjury were subject before the passing of this Act.

3. And it is hereby provided, that this Act shall not extend to any proceedings in any of Her Majesty's courts of justice.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council after the 21st day of January 1840.

J. P. Grant,
Officiating Secretary to the Government of India.

(No. 3.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Cons.
24 Feb. 1840.
No. 7.

Sir,

BY direction of the Indian Law Commission, I have the honour to acknowledge receipt of your letter, dated 18th November 1839, with draft of an Act for examination of native witnesses, and correspondence relative to it.

2. The Law Commissioners have carefully considered the above-mentioned draft and correspondence, as well as a further letter from the Presidency Sudder Dewanny and Nizamut Adawlut to government, which has been communicated to the Law Commission by the President. They have prepared a new draft Act, which they direct me respectfully to submit to the consideration of government, with the following observations.

3. In the opinion of the Law Commissioners, no oath or declaration ought to be a necessary ingredient in the offence of giving false evidence. They think that a person accused of causing ruin or disgrace or death to another by means of testimony which he has given, knowing it to be false, ought not to be allowed to defend himself against the accusation, by showing that he had not sworn or solemnly declared that his testimony was true. It may be admitted that some formal commencement of the judicial examination is desirable in every case, in order that the witness may know distinctly the moment at which his statements begin to affect the interests of the parties; and as in many cases it is also desirable that the witness should be warned of the obligation under which he is placed to speak the truth, the best course seems to be, that such a warning should be the formal commencement, and should for that purpose be made a necessary ingredient in the offence of false testimony. The law in the Presidency of Bombay is already in accordance with this principle.

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4. The Commissioners, however, direct me to make the above statement of their opinions only, with a view to prevent misconception of their views with regard to the ultimate settlement of the law upon this subject. In the accompanying draft, they have assumed, according to the avowed intention of government, that the oath or declaration is for the present to continue a necessary ingredient in the offence of false testimony whenever it is so by the existing law.

5. The Commissioners think that the new Act should not be confined to the oaths of witnesses properly so called, but should extend to all oaths taken in judicial proceedings. By Act No. XXI. of 1837, provision is made in respect to all oaths except those required to be taken in any judicial proceedings. If, therefore, the new Act is made applicable to all cases which are excepted from No. XXI. of 1837, there will be no case which is not provided for under one or other of these Acts.

6. As the inconvenience which calls for immediate legislation is felt only in the case of Mahomedans or Hindoos, the draft of the Law Commission may, perhaps, seem unnecessarily general. But the Commissioners think that any legal distinctions founded upon differences of religious opinion are as much as possible to be avoided; and it seems perfectly possible to avoid such a distinction in this instance without any risk of offending prejudices, or of in any degree weakening the credibility of testimony.

7. As the form of affirmation given by the draft contains an assertion that it is made in the presence of God, it may possibly offend the scruples of Quakers, Moravians, and others, who think that the precept against swearing, which is found in the Gospel, is to be understood as applicable to judicial oaths; and if the Jains and Budhists do not, as some allege, believe in a Supreme Being, the assertion would no doubt be offensive to a conscientious professor of those religions. In England, the scruples of Quakers and Moravians have met with indulgence. The scruples of individuals not belonging to those sects, but who may happen to share their opinions upon this particular point, and those of atheists, have not been thought worth attending to. This seems wrong in principle; and if there are, as is alleged, large sects of atheists in this country, it is not only wrong in principle, but must be mischievous in practice. For these reasons, the Commissioners have inserted a provision that the form may be varied so as to avoid shocking the conscience of the witness.

8. The Government is aware that in civil cases, the principal sudder amins, sudder amins and munsiffs, in the Bengal Presidency, and the district munsiff, in the Madras Presidency, are authorised at all times to cause the examination of a witness to be taken without an oath, and even without a solemn declaration, whenever the parties in the suit, or their respective vakeels, may agree to such witness being so examined; while in the latter presidency, in civil cases tried before village munsiffs and punchayets, the general rule is to dispense with oaths; those judicatories, however, being authorised to administer oaths where they deem it necessary. In the Madras Presidency also, oaths are dispensed with by law in all proceedings before heads of district police, not only in cases to be tried by the superior criminal courts, in which they conduct the preliminary investigations, but also in cases determinable by themselves, or on their report by the magistrates; and may be dispensed with by the magistrates, at their discretion, in their personal examination of complaints for petty offences and petty thefts, upon which they are competent to pass judgment.

9. No provision is made in the Bengal and Madras Regulations for the punishment of persons giving false testimony in cases in which oaths are so dispensed with. Possibly such persons may be punishable under the Mahomedan law, but the Commissioners think it right to bring the silence of Regulations to the notice of government.

10. Government is also aware that in the Presidency of Bombay no oath or declaration by the witness is necessary to constitute the offence of perjury; it is sufficient if there has been an admonition by the court. As the Commissioners highly approve of this provision, they of course do not propose to alter it; and the only reason why they do not recommend its extension to the other presidencies upon this occasion is the avowed intention of Government to retain an oath or declaration by the witness.

11. The details, however, of the Bombay code on the subject are not quite satisfactory. In the part relating to civil judicature, it is provided, immediately after

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after the admonition, that "a witness who after being admonished, wilfully gives false evidence before the court, shall be deemed to have committed perjury, and shall be liable to punishment accordingly." (Regulation IV. of 1827, s. 34, c. 2.)

12. In the part relating to criminal judicature, there is no corresponding provision, although the admonition itself is in precisely the same terms as that provided for civil cases, and concludes by warning the witness, that "he will be liable to punishment as a false witness." (Regulation XIII. of 1827, s. 34, c. 2.)

13. In the part relating to the offence of perjury nothing is said of any admonition by the judge, and it is only provided, that "any person who shall wilfully make a false statement upon oath or solemn declaration before any authority empowered by Regulation to administer the same, shall be subject to the punishment of perjury." (Regulation XIV. of 1827, s. 16, c. 1.)

14. Moreover, the legislature which enacted the Bombay code, was not competent to bind the Supreme Court. It seems, therefore, at least doubtful, whether a British subject who has taken no oath, but has only been admonished by the judge, can be convicted of perjury by that court for any evidence he may have given in a Mofussil court.

15. These defects, if such they are, will be supplied by the general provisions of the draft.

16. The Commissioners have considered whether it is expedient to make any express provision for the punishment of persons who may refuse to make affirmation according to the new Act, and they have come to the conclusion that it is not expedient. Their reason is, that in the great majority of cases there is no express provision in the Regulations for the punishment of those who may refuse to take any of the oaths or declarations now in use. The power to punish for such refusal is understood to be included in the power to punish for refusing to give evidence; and this latter power will of course equally include a power to punish for refusing to make affirmation under the new law.

17. As the Government intends to except from the Act the courts established by Her Majesty's Charter, it will sometimes happen that a witness who has made affirmation in one form when deposing against a prisoner before a justice of the peace, will have to make oath or affirmation in a different form upon the trial of the prisoner before the Supreme Court. This will be a great anomaly; but not greater than would exist if the proceedings before justices of the peace had been excepted from the Act. For in that case, a magistrate would have had to use one form when taking depositions preparatory to a trial in the Supreme Court, and another when taking evidence in cases within his own jurisdiction.

18. The Commissioners have used the word "affirmation" instead of "declaration" because the latter word is always translated in the Regulations by words which mean a written oath, as distinguished from an oral oath.

I have, &c.

Indian Law Commission,
3 February 1840.

(signed) *J. C. C. Sutherland,*
Secretary.

DRAFT ACT.

Cons.
24 Feb. 1840.
No. 8.
Enclosure.

1. WHEREAS obstruction to justice has arisen from the unwillingness of natives to be sworn upon the Koran or by the Water of the Ganges, or according to other forms which are repugnant to their consciences; and whereas it is desirable that, as far as the diversity of religious opinions and feelings will allow, one form of affirmation should be substituted for the various forms now in use in judicial proceedings, it is therefore hereby enacted, that in all cases in which in any stage of any judicial proceeding any oath, solemn declaration or affirmation is required by law, or by any authority empowered to require the same at his discretion, the following form of affirmation shall be used, unless the person called upon to make such affirmation shall satisfy the authority administering the same that such affirmation is repugnant to his conscience;

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"I solemnly affirm, in the presence of Almighty God, that the information which I shall give, and the answers which I shall make to all such questions as shall be demanded of me touching the matter under inquiry, shall be the truth, the whole truth, and nothing but the truth."

2. And it is hereby enacted, that if the person called upon to make such affirmation shall satisfy the authority administering the same, that such affirmation is repugnant to his conscience, then such other form of affirmation shall be used as, without being repugnant to the conscience of such person, may approach most nearly to the above form.

3. And it is hereby enacted, that nothing in the 1st or 2d section of this Act shall extend to any proceeding in any of the courts established by Her Majesty's Charter.

4. And it is hereby enacted, that any person who shall make any statement after he shall have made affirmation as above, which statement would have rendered him guilty of the offence of perjury if he had made it after having taken an oath in any of the forms now in use, shall be guilty of the offence of false testimony.

5. And whereas it is provided by several Regulations of the Bombay code, that before a witness gives evidence, the court shall admonish him in the following or similar words:

"Be careful that you tell to the court the whole truth, and nothing but the truth, in the matters on which you are now to be examined, or otherwise you will be liable to punishment as a false witness."

6. It is hereby enacted, that any witness who shall make any statement after he shall have been so admonished by the court, which statement would have rendered him guilty of perjury if he had made it after having taken an oath in any of the forms now in use, shall be guilty of the offence of false testimony.

7. And it is hereby enacted, that any person accused of false testimony may be tried, and if convicted, shall be punished as if he had been convicted of perjury, by any court, whether established by Her Majesty's Charter or otherwise, which would be competent to try such person for perjury.

8. And it is hereby enacted, that any person accused of subornation of false testimony may be tried, and if convicted, shall be punished as if he had been guilty of subornation of perjury, by any court, whether established by Her Majesty's Charter or otherwise, which would be competent to try such person for subornation of perjury.

(signed) *J. C. C. Sutherland,*
Secretary.

Indian Law Commission,
3 February 1840.

Cons. 24 Feb. 1840. No. 9.
Examination of Witnesses.

MINUTE by the Honourable *A. Amos*, Esq., dated 1840.

HAVING now before us answers to all our letters upon the subject of judicial oaths, it will be necessary to advert to the following points for consideration:

1. Is it expedient to substitute a simple form of declaration for the forms of oaths and declarations now in use.

The Upper and Lower Bengal Sudder courts, the Law Commission, the Governor of Madras, and apparently the Sudder court of Bombay, are all in favour of the change. The Sudder court of Madras and Mr. Bird of the Madras government, who are of an opposite opinion, apparently on the ground that it is inexpedient to relinquish a religious safeguard for the truth of judicial testimony, do not advert to the circumstance, that the proposed declaration partakes of a religious character, a circumstance which is thought very material by both the Bengal Sudder courts.

Although it may be thought a real objection, that the substituted form will probably fail of affecting some consciences which the old forms now influence (though we are informed by the Bengal Sudder judges that perjury now prevails "to a fearful extent" in the Mofussil courts), yet considering how difficult it is to find out that peculiar form of adjuration will have effect on the conscience of particular native witnesses, and considering, as observed by the Bengal Sudder judges, that the "present forms operate as impediments to the appearance of a more respectable class of witnesses than are now generally brought

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brought forward," and that their repeal would lead to "producing evidence of a superior and more credible character," and adverting to the opinion of the same judges that a solemn form of declaration will be "fully efficacious," whilst the influence of civil penalties and other safeguards is not to be overlooked; I think the balance of expediency is much in favour of the proposed alteration. It seems clear that the discretion left at present with the magistrate does not afford to the minds of native witnesses security against the obnoxious forms being forced upon them; and, moreover, by creating an invidious distinction between the modes of delivering testimony by the higher and lower orders, it renders native witnesses still more averse to taking oaths, as not being merely offensive to their consciences, but also derogatory to their respectability.

Lastly, the English Legislature has virtually relieved native witnesses, when brought forward in Her Majesty's courts, from affording any religious guarantee for their testimony.

2. It is expedient to go further than we have done as regards natives, and relieve them in the Mofussil courts from affording any religious guarantee for their testimony.

The English statute and the practice of the Supreme Court of Calcutta are in favour of this view, and this is recommended by the Law Commission. It is also strongly advocated by the Governor of Madras.

But I think that in adopting such a measure, we should be acting contrary to the opinions of both the Bengal Sudder courts, and should be departing much more widely than at present from the views of the Madras Sudder; and, as far as we can collect from the information before us, the principal evils of the present system will be remedied, without proceeding to this length. Indeed, the judges of the Bengal Sudder observe, that the substitution of a solemn form of declaration will be "fully efficacious;" whilst, on the other hand, the dispensing with all religious reference may be thought to occasion some risk, at least, of endangering the credibility of native testimony. The grounds of Lord Elphinstone's opinion, that the Act will be construed into an insult upon the native community, if they are released from oaths, whilst oaths are required from Europeans, does not appear to be well founded; for the proposed form of affirmation, if it be not strictly an oath (which it may not unreasonably be considered), is at least of a religious character, and founded on a belief that the witness is under the influence of religious motives. It may, moreover, be well doubted whether the natives would advert with any anxiety to the distinction supposed to be obnoxious; a distinction which, it is to be observed, has long been practically enforced in the Supreme Court. Should the Act, according to suggestions which will be presently considered, be extended to European witnesses in the Mofussil courts, or to all courts, the ground of some of Lord Elphinstone's objections will thereby be partially or totally removed; but if the Act is to be so extended, it will behove us to be practically cautious as to taking away the religious guarantee. Though the views of Lord Elphinstone and of the Law Commissioners (the latter of whom would do away with all declarations of any kind) are reasonable, if regarded in the abstract, yet if the state of opinion, feelings, and education of the various grades of Europeans are considered, I think that by taking away all the religious character of judicial testimony, especially if all declarations were superseded, it might materially impair the credibility of European evidence. Indeed, as regards the Supreme Courts, I do not think that we should be justified in adopting a measure so much opposed to the principles of the English law of evidence, and the practice of the courts in England, without a reference to the Home authorities.

3. One of the most difficult points for our consideration is, whether the Act should be limited to Hindoos and Mahomedans, or to native witnesses, or should include all witnesses in the Mofussil courts. In favour of the latter course it is to be observed, that there is much advantage in uniformity, that any possible invidiousness of distinction (as apprehended by Lord Elphinstone) will be obviated, and "that it is desirable to avoid legal distinctions founded upon the expenses of religious opinion," when it can be done, as the Law Commissioners think it can be in the present case, "without any risk of offending prejudices, or in any degree weakening the credibility of testimony." There is, besides, some inconvenience in a native judge administering the present form of English oath, though in England the judges frequently administer, through

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through their Christian officers, Pagan and other oaths, without any complaint having been made on that account; moreover, there will be some difficulty (though perhaps of no great consequence, if practically considered) in the application of the term "native witnesses." It has been represented, that if the Act were confined to Mahomedans and Hindoos, the Parsees and others would consider that they had an equal title to be released from the ritual of testimony now required from them. It is to be noticed that the Law Commission and the Upper Sudder court wish the proposed form to be applied to European witnesses in the Mofussil courts. This point does not appear to have undergone consideration by any other authorities, excepting Lord Elphinstone, who goes beyond it.

Though as the proposed form of affirmation partakes of a religious character, much of the objection arising from the departure from the English custom of delivering testimony by English witness is removed, yet I think, with deference to the opinions of my colleagues of the Commission, that such departure would be attended with a risk of "in some degree impairing the credibility of European testimony," whilst it appears to me objectionable to be swearing English witnesses by different forms in the Queen's and Company's courts; a consequence which must follow, if the Act is passed as drafted by the Commission; and I incline to think that any meddling with the English form of oath according as it had been administered hitherto in the Company's courts, without complaint or objection, would not be favourably regarded by the Home authorities.

As regards depositions taken before justices of the peace, the proposed extension of the Act to European witnesses will lead to the reception of evidence given by English witnesses (depositions being readable after the death of the witnesses) in the Supreme Courts in a less solemn form than heretofore. With regard to the term "native witnesses," it is to be observed that none of the Sudder courts suggest any difficulty in giving a practical application to that term. It is, in fact, the very term employed by the English Legislature in the clause of the statute by virtue of which the Supreme Court dispenses with an oath; the term has not created difficulties there. Should a few doubtful cases arise by possibility, it is a matter of very trifling importance, considered with reference, on the one hand, to the multitude of persons who undoubtedly would be included, or, on the other, would be as clearly excluded, if the term "native witnesses" be employed. I may further notice an objection of considerable importance, that it will be seen, under the next head, that if one Act contain any religious reference, and be extended to European witnesses, an exception must be introduced, the framing of which will be attended with much difficulty; lastly, it is very important, with reference to the present head, to bear in mind that the emergency which occasions us to legislate has no reference at all to European witnesses.

4. The next question is likewise one of considerable difficulty: it is whether, if the witness objects to our prescribed form, and points out another which is more congenial to his feelings or conscience, any option shall, under restrictions or otherwise, be allowed to the witness.

In the first place, it is very necessary to advert to a distinction, a disregard of which may lead to much confusion. The discretion exercised under the existing Regulations by functionaries is very different in its nature from that which is now to be considered according to the discretion conferred by the Regulations; every witness apprehends that the functionary may, if he pleases, subject him to what is revolting to his conscience and feelings; and, moreover, the functionary is directed to exercise his discretion with reference to the condition rather than to the conscience of the witness. According to the discretion we are about to consider, and which has reference only to the conscience of the witness, the worst that can happen to a witness is, that he may be obliged to take our very simple form of affirmation; so simple, indeed, that so long as any religious reference is retained, any substitution for it would seem to be more obligatory on the witness, and, therefore, *primâ facie*, more likely to be objectionable to him. It may be thought, for instance, that it is very improbable that a witness would be deterred from entering a court of justice, because, under the new Act, the magistrate might, in his discretion, refuse him the Ganges Water or Koran. On the other hand, it may be observed, that simple as our proposed form of declaration is, the taking of it will be deemed derogatory

if

if any discretion as to other forms be permitted; nay, further, that some witnesses might require to be sworn according to the present or other idolatrous forms, which are revolting to some civil servants of extreme religious opinions, and who are at present, in consequence, out of employ. There appears to be more weight in another objection of the Allahabad court, provided it be well founded, viz. That all parties would be disposed to object that witnesses adopting the new form intended to give false testimony, and on that account avoided the more solemn forms of adjuration at present in use. This objection, however, is somewhat weakened by the consideration, that the ordinary form would be that proposed from the Act, and that any deviation from that form would be regarded as an exception, to be allowed reluctantly, and only after strict inquiry; moreover, as respectable persons will not generally swear upon the Ganges Water or Koran, their motives in not objecting to the ordinary form which the judge would propose could not be suspected; and any objection founded upon this circumstance would have no influence on other natives who felt the same scruples as to the existing forms. It may be further observed, that the English law of evidence accommodates the form of oath to the consciences of particular witnesses.

With regard to the evasion of justice suggested by the Allahabad court, by means of feigning that a particular form is binding on the conscience, and the case cited of a Mahomedan who gave false testimony after being sworn as a Hindoo, and was, under these circumstances, acquitted, I can only say that the decision appears to me so repugnant to law and to common sense, as to deprive the argument founded upon it by the Allahabad court of any further weight in the present discussion, than as showing the advantage of extremely definite and simple rules, leaving as little as possible to the discretion and judgment of the authorities, in order to guard against the aberrations of even a Sudder court.

If we extend the Act to European witnesses in the Mofussil courts, we must, I think, make an exception, though it be almost theoretical, merely for Quakers and Moravians; I think this would be required by the Home authorities. The Law Commission think that atheists and some particular Indian sects should be excepted also. I do not feel the force of this as a practical point; if excepted, they should clearly not be named expressly. There will be a difficulty in making any exception at all, and not making it general; and it will be observed that the Law Commissioners have accordingly made the exception a general one, and have even allowed all natives under the exception to be examined at the discretion of the magistrate, without any religious guarantee, which, I fear, would soon render the form prescribed in the Act derogatory in their estimation.

On the whole, if the Act be confined to native witnesses, it may be deserving of consideration, whether it will not be most advisable to prescribe a simple form of declaration imperatively; we can afterwards allow of a discretion, if the necessity for it be practically indicated, in which case we may be able to judge better than at present what kind of discretion should be permitted. It may be thought more easy to add than to withdraw a discretion by future legislation. If the Act is to be extended to European witnesses, I think an exception will be necessary for Quakers and Moravians; but whether the judge should be authorised to receive the testimony of other European witnesses without either oath or religious declaration, seems to require much consideration. It must be borne in mind, with reference to this exception, that the discretion is not limited to witnesses and courts of justice, but is given to all authorities in any stage of a judicial proceeding.

5. The next question relates to extending the original scope of the Draft Act, (which was founded on the immediate grievance complained of) to all oaths and declarations not included in Act XXI. of 1837.

This seems to be thought desirable by the Bengal Lower Sudder court, and is recommended by the Law Commission; I know of no objection against it, and I think it advisable on various grounds.

6. The next question relates to the discretionary powers at Madras and Bombay, of dispensing with or requiring an oath at the discretion of the functionary, and the preliminary admonitions contained in the Bombay code.

Though I do not agree with the rest of the Law Commission in their eulogies of the Bombay practice, yet as no practical inconvenience is complained of by the

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the Bombay or Madras authorities, I think it would be inexpedient to interfere with the practice that has prevailed in those presidencies, further than prescribing that when an oath or declaration is taken or made, it shall be in conformity with the provisions of the Act.

7. As to the technical form of the draft prepared by the Law Commission, on re-perusing the draft, subsequently to my conference with the Commissioners, I do not like making a new created offence as "false testimony," and rather prefer the terms suggested by the Lower Sudder court. I submit another draft, not in preference, but to assist the Council in deciding upon the various points for consideration.

Cons. 24 Feb. 1840. No. 10.

AN ACT for amending the Oaths and Declarations required from Natives of *India*.

1. WHEREAS obstruction to justice and other inconveniences have arisen in consequence of the natives of India being compelled to swear upon the Koran, or by the Water of the Ganges, or according to other forms which are repugnant to their consciences or feelings;

It is hereby enacted, that, except as hereinafter provided, instead of any oath or declaration now authorised or required by law, every native of India shall make the following affirmation:

"I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

2. And it is hereby enacted, that if any native witness making such affirmation as aforesaid shall wilfully and falsely state any matter or thing, which, if the same had been sworn before the passing of this Act, would have amounted to perjury, every such offender shall be subject, as well in her Majesty's courts as in those of the East India Company, to the same punishment to which persons convicted of perjury were subject before the passing of this Act.

3. And it is hereby enacted, that any person causing or procuring another to commit the offence defined in the second section of this Act, shall be subject, as well in Her Majesty's courts as in those of the East India Company, to the same punishment to which persons convicted of subornation of perjury were subject before the passing of this Act.

4. And it is hereby provided, that this Act shall not extend to any declaration made and subscribed under the authority of Act No. XXI. of 1837, or to any declaration made in any of Her Majesty's courts of justice.

Cons. 24 Feb. 1840. No. 11.
On Hindoo and Mahomedan Oaths.

MINUTE by the Hon. *W. W. Bird*, Esq., dated the 21st February 1840.

I CONCUR with Mr. Amos that the draft submitted by the Law Commission will not answer the purpose intended, inasmuch as it goes far beyond the object in view, and provides for the exercise of that very discretion the withdrawal of which was considered indispensably necessary.

Indeed the new draft prepared by Mr. Amos appears to me to go too far; the object originally proposed was merely to provide, by a legislative Act, that no other form of adjuration should in any case be exacted from Hindoos and Mahomedans than that of solemn declaration, which is laid down in special cases only.

Such was the utmost extent of the change proposed to be introduced; and to a measure of this limited character, it ought, I think, for the reasons already assigned at former consultations, to be restricted.

Its extension to any other class, especially to persons of the Christian persuasion, whether Europeans or natives, would be attended, as the papers under consideration clearly show, with great inconveniences.

Mr. Amos's new draft, slightly altered, will remove the obstructions to justice complained of without creating any of those difficulties which will arise if the Act be allowed a more extended scope.

(signed) *W. W. Bird.*

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Oaths and Declarations of Native Witnesses.

MINUTE by the Right honourable the Governor-general, dated the 24th February 1840.

ABOLITION OF OATHS ACT.

Cons. 24 Feb. 1840. No. 12.

I AM entirely of opinion that this Act should be passed upon the principles on which we agreed when it was first before us in draft. That principle retains an affirmation with a religious sanction; in fact, all the substance of an oath; and I do not apprehend that Europeans will be dissatisfied because we relieve Hindoos and Mahomedans from forms which are obnoxious to them; and, as I have before stated, I am not now prepared to extend the measure to the discontinuance of the religious sanction, which would be an extreme departure from what has yet been admitted in English jurisprudence.

(signed) *Auckland.*

ACT No. V. OF 1840.

Cons. 24 Feb. 1840. No. 13.

Passed by the Right honourable the Governor-general of India in Council, on the 24th of February 1840.

AN ACT concerning the Oaths and Declarations of Hindoos and Mahometans.

1. WHEREAS obstruction to justice and other inconveniences have arisen in consequence of persons of the Hindoo or Mahometan persuasion being compelled to swear by the Water of the Ganges, or upon the Koran, or according to other forms, which are repugnant to their consciences or feelings;

It is hereby enacted, that except as hereinafter provided, instead of any oath or declaration now authorised or required by law, every individual of the classes aforesaid within the territories of the East India Company shall make affirmation to the following effect:

> "I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

2. And it is hereby enacted, that if any person making such affirmation as aforesaid shall wilfully and falsely state any matter or thing, which, if the same had been sworn before the passing of this Act, would have amounted to perjury, every such offender shall be subject in all courts to the same punishment to which persons convicted of perjury were subject before the passing of this Act.

3. And it is hereby enacted, that any person causing or procuring another to commit the offence defined in the second section of this Act, shall be subject in all courts to the same punishment to which persons convicted of subornation of perjury were subject before the passing of this Act.

4. And it is hereby provided, that this Act shall not extend to any declaration made under the authority of Act No. XXI. of 1837, nor to any declaration or affirmation made in any of Her Majesty's courts of justice.

No. VII.
Suppression of Affrays concerning Indigo.

—(A.) No. VII.—

SUPPRESSION OF AFFRAYS CONCERNING INDIGO.

(No. 49.)

Consultations. 16 Sept. 1839. No. 1.

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, in the Legislative Department.

Sir,

I AM directed by the Indian Law Commissioners to request that you will submit to the consideration of the Right honourable the Governor-general of India in Council the following observations on the subjects noticed in the latter part of your letter to the address of Mr. Millett, dated the 28th of December 1835.

2. In the sixth paragraph of that letter, after noticing the unanimous opinion of the Law Commissioners, that it would be inexpedient to enact any law specifically for the more effectual suppression of affrays concerning indigo, you conveyed an intimation of the expectation of the government that this important subject, in all its bearings, would receive from the Commission that attentive consideration which it deserves. I am now directed to report that this subject has again been taken up by the Commissioners, during the preparation of the Penal Code lately submitted to government, and has been maturely considered. The Law Commissioners are of opinion, that everything which can be effected by penal laws, towards the suppression of affrays of the nature in question, would be effected by the enactment of that code, in which, besides the provision of suitable penalties for committing extortion, trespassing, rioting, inflicting bodily hurt, or committing culpable homicide, as the case may be, a peculiar provision has been made, with a view to check an unnecessary resort to violent measures, in cases of a disputed right of possession, even on the part of a person defending a rightful claim.

3. The chief peculiarity in these affrays is this, that they are supposed to be originated by parties who do not appear in them openly. The Penal Code would make such parties liable to the same punishment with those who are openly engaged in committing the offence. The detection of such parties, and their conviction, must depend greatly on the vigilance of the police, and the existence of reasonable rules of evidence. The vigilance of the police is, of course, matter for the sole consideration of the executive government; but the Law Commissioners hope shortly to submit for consideration a project of a law of evidence, such as they consider to be best adapted for the ascertainment of truth.

4. Whatever further provisions of law may be necessary, in order to the more effectual prevention of affrays of this sort, will be considered in connexion with the code of criminal procedure.

5. With respect to the question of enacting a law for the pounding of cattle, the Law Commissioners observe, that a part of this question has been disposed by them by the provisions in the Penal Code on the subject of trespass, by which the intentional driving of cattle on the property of another party would be a punishable offence. The rest of this question, together with the entire question of enacting a law to provide for the registration of deeds, including indigo contracts, must, as observed by the Honourable the late Governor-general of India in Council, lie over until these questions shall respectively arise in due course, during the regular progress of the labours of the Law Commissioner.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
11 July 1837.

(No. 276.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Judicial Department.

Consultations. 16 Sept. 1839. No. 1. (A.)

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to forward, for the consideration of the Honourable the President in Council, original correspondence, as per margin, with draft of an Act prepared by the Sudder court for the summary decision of disputes regarding valuable crops.

Letter from the Register of the Nizamut Adawlut, dated 7 Sept. 1838, No. 2692, with Enclosures.
Letter to the Register of the Nizamut Adawlut dated 22 Sept. 1838, No. 1866.
Letter from the Register of the Nizamut Adawlut, dated 18 Jan. 1839, No. 152, with Enclosures.

The Deputy-governor does not approve of the principle of the law proposed, and he can see no good reason for having different laws to apply to disputes regarding different crops; but he deems it proper, under the circumstances, to submit the whole subject for the consideration of the Supreme Government.

I have, &c.

Fort William,
5 February 1839.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 2692.)

From *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Consultations. 16 Sept. 1839. No. 2.

Sir,

Enclosure.
Nizamut Adawlut. Present:—R. H. Rattray and W. Bradon, Esqrs. and Judges; W. Money, Esq. Temporary Judge.

I AM directed to request that you will lay before his Honor the Deputy-governor the accompanying copies of correspondence, as per margin,* on the subject of disputes occurring between indigo planters who cultivate lands held under leases from zemindars or their tenants.

2. The views of the court on the subject are fully stated in the third and fourth paragraphs of their letter to the address of the register of the western court, dated the 3d ultimo, with reference to which they beg to suggest the expediency of declaring, by a legislative enactment, the competency of the magisterial authorities to take summary cognizance of such disputes.

I am, &c.

Fort William,
7 September 1838.

(signed) *J. Hawkins*,
Register.

(No. 69.)

From *B. Golding*, Esq. Session Judge of the Zillah, Jessore, to *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut, Fort William.

Sir,

Session Court.

THE Court of Nizamut Adawlut, by their letter to the Commissioner of Circuit for the 13th division, dated 5th August 1831, No. 652, of Construction Books, vol. ii, page 16, have held that magistrates can interfere in cases of indigo disputes only when they may be cognizable under Regulation XV. of 1824, as construed by the court's circular of 17th December 1830; and that in disputes regarding indigo not coming under the provisions of that Regulation, the inquiry must be made under Regulation VI. of 1823.

2. The construction contained in the court's circular above referred to declares that Regulation XV. cannot apply to mere kashtkars or cultivators of the soil, or, in other words, to persons having no property in the soil, but merely disputing about the right to cultivate. In this position are many of the indigo planters, who hold lands on lease, by pottahs or other documents, either from the real proprietors

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* From the Session Judge of Jessore, No. 69, 19 July, with Enclosure.
To Register Western Court, No. 2241, 31 August, and Proposed Letter to Session Judge of Jessore.
From Register Western Court, No. 1000, 24 August.

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proprietors of the land, or from their under-tenants, which lands they cultivate themselves by means of their factory servants, without making advances to any one for the plant; and it frequently happens that disputes arise between the indigo planter thus holding the lands, and either the proprietor of the land or other persons claiming the right to cultivate, or the plant itself, after it has grown up.

3. The question I wish to ascertain now is, how and in what court are these cases to be investigated, and the right either to cultivate or cut the plant when ready (should it be disputed) to be determined; for Regulation VI. 1823, refers only to persons who have taken advances for indigo, and either evade or neglect to fulfil their contracts; and the planter cultivating himself lands, held as above described, cannot, I presume, sue under that Regulation.

4. An early reply to the above will much oblige, as I have now a case in appeal before me, in which the joint magistrate ordered the planter to be kept in possession, the nature of the case being of the kind above described, which precludes it from being tried under Regulation XV. 1824. The order of the joint magistrate was passed as a miscellaneous one, but being appealed against, cannot, in the absence of any Regulation authorizing it, be upheld, and I am at a loss to know how to direct the joint magistrate to proceed in such cases; and it is very necessary that some definite order should be passed, and some rule laid down, for the guidance of the magistrates in such like cases, or there will be no end to disputes in the Mofussil about indigo plant cultivated as above described, and it will be found very difficult to keep the peace.

5. I am of opinion (the plant itself being the real property in dispute) that in cases when cultivated by the planters themselves, or, as they call it, "neiz jhote," the magistrate might with propriety investigate the claim, by inquiring into who actually cultivated the ground under Regulation XV. and pass an order for its being placed in possession of the party proved to have grown the crops; but this would not meet the question of the right to cultivate, which I think the magistrates might with propriety be also allowed to investigate in summary manner, referring the party dissatisfied with his award to the civil court.

6. It is to be observed, that this system of taking pottahs by planters is of recent occurrence, and, consequently, nothing has been provided for settling the jurisdiction and the manner of investigating into the disputes which may and do arise from the practice; and it is impossible that the police can be expected, with their limited means, to prevent the parties from committing an affray, unless the magistrate is empowered to issue some definite instructions regarding the point of possession.

7. In connexion with the subject of this reference, I have the honour to forward herewith copy of a letter from the joint magistrate, dated the 18th instant, received this morning, and shall be obliged by the court's opinion on the queries put by that officer in the fourth paragraph of his letter.

I have, &c.

Zillah, Jessore, 19 July 1838.

(signed) *B. Golding*,
Session Judge.

From *C. B. Trevor*, Esq. Joint Magistrate of Jessore, to *B. Golding*, Esq. Session Judge, Jessore.

Sir,

I HAVE the honour to request, that, should no objections present themselves, you would forward this communication to the Court of Sudder Nizamut Adawlut, together with any remarks that you may think fit to make.

2. The modes in which indigo planters carry on their operations in this district are, first, the giving advances, in which case the ryot engages to cultivate the ground, and second, the taking of leases when the land is cultivated by the planters' own servants. The system of advances was formerly very generally adopted; since, however, the repeal of Regulation V. of 1830 (which Regulation rendered a ryot not adhering to his contract liable to a criminal prosecution), it has been greatly discontinued, and that of leases, either for a definite or indefinite period (which was a custom comparatively uncommon), has come almost universally into practice.

3. This

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3. This preference for the latter system has arisen from the superior claim which the holder of a pottah has always been considered to have over an advance maker, the difference being that one has merely a lien and interest in the plant produced, whereas the other asserts his right to the land itself; and it has been the custom in this magistracy for some time past to hold a summary investigation upon the validity of the pottah or pottahs, as the case may be (though unwarranted expressly by any Regulation), and to give the land (notwithstanding the dissatisfaction of the ryots) into the possession of the person who establishes his claim by lease to the land.

4. As, however, from the decision which in one or two cases of appeal relative to indigo have been given by the session court, your opinion seems to be that a magistrate has not the power of holding proceedings in cases of disputed pottah lands, but can only enjoin darogahs to take care that the peace be not disturbed, I wish much that the opinion of that court be taken on the following points:—

1st. Whether a magistrate or joint magistrate be competent to hold summary investigations into cases in which parties claim lands for sowing indigo on the strength of pottahs (which the ryots deny) or of previous possession, or whether the denial of the pottah by the ryot is to be held conclusive, and the aggrieved party to be referred to the civil court.

2d. Whether, when two parties claim the same ground for sowing indigo, and produce pottahs from two different parties, it is competent for a magistrate or joint magistrate, either by reference to the zemindar or by inquiry into the validity of the documents or previous possession, to adjudge the lands in dispute to the party which satisfactorily proves his right, leaving the other to seek his remedy in the civil court.

3d. Whether, when the plant be ready for cutting, and one or more parties claim the same portion of ground as land held by them on lease, it be competent for the magistrate or joint magistrate to take cognizance of such cases, and to give the plant to the party satisfactorily proving his claim, taking at the same time proper security from him.

5. The court will observe, that by disallowing any power to the Foujdarry court in cases of the nature mentioned in these queries, an evident advantage is given to parties making advances over those holding leases, inasmuch as to these last, no remedy, either for breach of contract in the first instance, or for injury by loss of the crop of indigo, can be had, save by the tedious process of a regular civil suit; and in the meantime the plant goes into the hands of a third party, with whom the ryot has colluded, and eventually, if damages be awarded to the planter, the ryot has not the means of satisfying the decree against him; whereas by Section 5, Regulation VI. of 1823, a planter can proceed summarily against a ryot who has entered into an engagement with him for the cultivation of a particular spot of ground, and who afterwards wishes to evade the fulfilment of that engagement; and by section 3 of the same Regulation, parties claiming plant on the strength of advances can obtain summary decisions on the payment of a proper security.

6. Though fully aware of the frequent forgery of pottah, still the same may be asserted of kubooleeuts. I therefore submit that the cases now under review, taken with all their attendant circumstances, require equal facilities with those provided for by Regulation VI. of 1823.

7. In conclusion, I beg to remark, that unless a summary power be given in these cases, either to the judge or magistrate, the difficulty of preserving the peace of the district will be so great as to amount almost to an impossibility. Several large zemindars and indigo planters are establishing new factories in the neighbourhood of others of long standing; hence the daily chance of collision between different parties. This fact, together with the scanty force of the police, and the distance of many thannahs from the Sudder station, renders it almost unreasonable to expect that, even with the greatest energy (unlesssome definite order be conveyed to them regarding possession), the police officers will in all cases be able to prevent the occurrence of affrays.

I have, &c.

Jessore, Foujdarry Adawlut, 18 July 1838.

(signed) *C. B. Trevor*, Joint Magistrate.

(A true copy.)

(signed) *R. Golding*, Session Judge.

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(No. 2241.)

From *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut, Fort William, to Register Nizamut Adawlut, Western Provinces.

Sir,

Nizamut Adawlut. Present:—R. H. Rattray and W. Braddon, Esqrs. Judges: W. Money and J. R. Hutchinson, Esqrs. Temporary Judges.

I AM directed by the court to transmit to you, for the opinion of the judges of the western court, a copy of a letter (No. 69 of the 19th ult.) from the session judge of Jessore, and its enclosure, inquiring how disputes are to be settled that arise between planters who cultivate lands held under leases from zemindars or ryots, and of the reply which, with the concurrence of the western court, they propose to send to that authority.

2. A further object of this reference is to obtain the opinion of the western court as to the propriety of recommending to the government to take into its consideration the means of providing for the speedy settlement of disputes of the kind alluded to.

3. The provisions of Regulation VI. of 1823, the court observe, are applicable only to the adjustment of claims to crops, for the raising of which advances had been given to the ryots. The extension to British subjects of the right to acquire and to hold lands in their own names, has given rise to a different state of things. Lands are more extensively cultivated immediately by planters, and hence the frequency of disputes between the proprietors of neighbouring factories for the right to cultivate land which each party claims as included within its holding.

4. It is obviously desirable that disputes arising from this source should admit of being summarily settled, so as not to endanger the peace of the places where they occur; and that the magistrate should be empowered, as in other cases of dispute about lands, to decide which party has the best claim. Should the western court concur in this opinion, the point will be submitted to the government.

I am, &c.

Fort William,
3 August 1838.

(signed) *J. Hawkins*, Register.

PROPOSED REPLY.

To Session Judge of Zillah, *Jessore*.

Sir,

THE court, having had before them your letter, No. 69 of the 19th ult., with its enclosure, direct me to observe that you are correct in supposing that the magistrate cannot interfere in disputes between indigo planters regarding crops, except where the parties claim to be proprietors of the land on which the disputed crops are grown, or where advances have been given for raising such crops; planters, therefore, who apply to the magistrate for possession of crops claimed by others, must be referred to the civil court for their remedy.

2. Under the construction of the 17th December 1830, which you allude to, the magistrate clearly cannot decide summarily, agreeably to Regulation XV. of 1824, to whom shall be adjudged crops grown on land held under pottahs from zemindars or ryots. This answer meets the three questions propounded by the joint magistrate in the third paragraph of his letter, the second of those questions being understood to refer to the case of two planters who have taken leases from ryots, each claiming the right of cultivation under pottahs from the same zemindar, and there being no dispute in regard to proprietary rights.

I am, &c.

No. VII.
Suppression of Affrays concerning Indigo.

(No. 1000.)

From *H. B. Harrington*, Esq. Register Sudder Court, Allahabad, to *J. Hawkins*, Esq. Register to the Court of Nizamut Adawlut, Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter (No. 2241), under date the 3d instant, with its enclosures, from the sessions judge of Jessore, and in reply, to state that the answer, which the Calcutta court propose to address to that officer on the points referred by him, appearing consistent with the construction of Regulation XV. of 1824, previously adopted, the court concur in the same.

N. A. N. W. P. Present:—M. H. Turnbull, A. J. Colvin, W. Lambert, W. Monckton, and B. Taylor, Esqrs. Judges.

2. The court also concur with the Calcutta court in the expediency of submitting the present correspondence for the consideration of government, as proposed in the concluding paragraph of your letter.

I have, &c.

(signed) *H. B. Harrington*,
Register.

Allahabad, 24 August 1838.

(True copies.)

(signed) *J. Hawkins*, Register.

(No. 1866.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to acknowledge the receipt of your letter, with enclosures (No. 2692), dated the 7th instant, on the subject of disputes occurring between indigo planters who cultivate lands held under leases from zemindars, or other tenants, and to request, in reply, that the court will submit a draft of an enactment to the effect proposed in your second paragraph.

I have, &c.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William, 22 September 1838.

(No. 152.)

From *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

IN compliance with the requisition contained in your letter (No. 1866) of the 22d September last, I am directed to forward to you the draft of an Act (prepared in communication with the western court) for investing the magisterial authorities with power to take cognizance of disputes regarding the right to cultivate lands for indigo, &c.

Nizamut Adawlut. Present:—R. H. Rattray, W. Braddon, Esqrs. Judges; J. F. M'Riod, Esq. Officiating Judge.

2. It will be seen that, at the suggestion of the western court (a copy of whose letter is annexed), the intended law has been assimilated to Regulation XV. 1824, so as to include those cases only in which a breach of the peace is to be apprehended, and that its provisions have been extended to the more valuable crops of the country.

No. 1584, 7th ult.

I have, &c.

Fort William, 18 January 1839. (signed) *J. Hawkins*, Register.

No. VII.
Suppression of Affrays concerning Indigo.

DRAFT of an ACT.

BE it enacted, that whenever it shall appear to a magistrate or joint magistrate, from the report of a police officer, or from any proceedings in the Foujdarry court, that disputes likely, in the opinion of the magistrate, to terminate in a breach of the peace, unless speedily adjusted, exist regarding the right to cultivate lands with indigo, coffee, cotton, or mulberry, or to cut crops the produce of such lands, on the ground that the latter are held under pottahs or leases granted by the proprietor or one or more of his tenants, it shall be competent to the magistrate to investigate the same and pass a summary decision, awarding possession of the land or crops to the party who shall appear to be best entitled to it, leaving to other party to seek his remedy by a regular suit in the civil court, in the same manner as in cases falling within the provisions of Regulation XV. 1824.

2. And be it enacted, that the summary decisions passed under this Act shall be appealable to the sessions judge, whose decision shall be final.

(No. 1584.)

From *H. B. Harrington*, Esq. Register to the Sudder Court of Allahabad, to *J. Hawkins*, Esq. Register to the Court of Nizamut Adawlut, Fort William.

Sir,

N. A. N. W. P. Present:—M. H. Turnbull, W. Monckton, and B. Taylor, Esqrs. Judges.

I AM directed by the court to acknowledge the receipt of your letter (No. 3294), under date the 23d ultimo, forwarding copies of the correspondence which has taken place between the Calcutta court and the government of Bengal, together with the draft of an Act empowering the magistrates to take summary cognizance of disputes regarding the right to cultivate lands for indigo under pottahs or leases, or to cut the crop thereon.

2. In reply, the court direct me to state that they are of opinion the operation of the proposed law should be restricted to disputes likely, in the opinion of the magistrate, to terminate in a breach of the peace, unless speedily adjusted, in the same manner as cases falling within the provisions of Regulation XV. of 1824.

3. It also appears to the court deserving of consideration whether, instead of confining the law to indigo crops, for which there does not appear to be any sufficient reason, it might not be beneficially extended to all other crops, or at least the more valuable ones, such as coffee, sugar, and cotton, and they would suggest its extension accordingly.

I have, &c.
(signed) *H. B. Harrington*, Register.

Allahabad, 7 December 1838.

(True copy.)
(signed) *J. Hawkins*, Register.

Consultations. 16 Sept. 1839. No. 3.

MINUTE by the Honourable *T. C. Robertson*, Esq., dated 16th February 1839.

THIS is an important reference, and not lightly to be disposed of. The necessity for a more summary adjudication of disputes than can be obtained from the civil courts has gradually extorted many extensions of power to the magistrates.

Regulation VI. of 1823 empowers a magistrate to grant summary redress to a planter injured by the evasion of a contracting ryot.

Regulation XV. of 1824 armed the magistrate with power to pass a summary judgment on disputes regarding the proprietary right to any particular parcels of land.

Regulation V. of 1830 made evasion of his contract by a ryot penal.

The repeal of this last law, and the extension to Europeans of the right to hold lands, produces the necessity for some enactment, to prevent those disgraceful collisions to which the more frequent settlement of our countrymen in the interior is otherwise likely to give rise.

For these reasons, I rather incline to the proposed Act; the objection that it does not go far enough, is rather specious than sound. One great object of the Act is to save our national character from reproach.

Europeans as yet do not sow rice.

(signed) *T. C. Robertson.*

No. VII.

NOTE by Mr. *F. Millett.*—(Not dated.)

By these sections it was provided that a proprietor or farmer of land, or dependent talookdar, or under-farmer, or ryot, or other person having a claim to any disputed land or crops in the possession of another, should not possess or attempt to possess himself of the land or crops by force, but should prefer his claim to the civil court; and that if any such claimant did forcibly take possession of the disputed land or crops, the party dispossessed might complain to the civil judge, who was directed to take immediate cognizance of the complaint, and upon the previous possession of the complainant being proved to his satisfaction, and without inquiring into the merits of the claim of the dispossessor, to cause the disputed land or crops to be restored to the complainant, or the value of the crops to be paid to him, if they had been damaged, destroyed or were not forthcoming, and to award against the offender such costs and damages as might appear equitable, leaving him to prefer his claim to the property in dispute to the civil court.

Consultations. 16 Sept. 1839. No. 4.

Sects. 2 & 3, Reg. XLIX. 1793.

Sects. 2 & 3, Reg. XXXII. 1803.

The above Rules were extended to Benares by Regulation XIV. 1795, and to all disputes in that province between zemindars, talookdars, putteedars, whether distinct or common, or other proprietors of land, or under-farmers, or ryots, or other persons, regarding tanks or reservoirs, wells or watercourses.

Complaints of violent dispossession from fisheries, tanks, &c. should be taken up under Regulation XLIX. 1793, according to the spirit of it.

Constructions of the Sud. Court, No. 28, 1806.

The provisions of the Regulation are applicable only to cases of dispossession by force, amounting to a breach of the peace, and the fact of forcible dispossession is the only subject of the summary inquiry authorized by it, all matters of right being cognizable in the regular manner.*

No. 39, 1808.

* By regular suit.

Under Section 15, Regulation VII. 1799, as well as upon general principles of justice, a defaulting farmer is liable to be ousted from his farm at the end of the year, for which an arrear of rent may be due from him, if he shall not discharge the same on demand. He may oust without application to the courts, as declared by c. 7 of the above section, provided no violence be used so as to bring the case within the provisions of Regulation XLIX. 1793.

No. 42, 1803.

If a plaintiff's lease expire before the summary action for possession and damages is determined, though it may not be requisite or proper to adjudge possession to the plaintiff, equitable damages, equal to the loss sustained by the plaintiff during the period of his lease, should be adjudged.

No. 158, 1814.

It was supposed disadvantageous to become the plaintiff under Section 3, Regulation XLIX. 1793; and disputes consequently, instead of being brought before the courts for adjustment, frequently continued till they ended in a breach of the peace.

Cl. 1, Sec. 5, Reg. VI. 1813.

This section, therefore, empowered the civil court, when advised by the criminal court that disputes existed concerning any lands or premises likely to terminate in a breach of the peace, to call on the parties to deliver a written statement of their possession, and adduce proof of their having been forcibly dispossessed or disturbed in their possession by the adverse party, and after an investigation of the statements and evidence of both parties, to decide the case in the same manner as if it had been brought on by a complaint in the ordinary mode.

In all such cases of forcible dispossession and disturbance of possession, but more especially in cases of disputes respecting the boundaries of estates and premises, and the right to water for the purposes of irrigation, the civil court was to endeavour to prevail on the parties to settle the dispute, either on the question of possession or of right, by reference to arbitrators.

Cl. 2.

But whereas, on complaints for forcible dispossession from land, and forcible disturbance of the possession thereof, it occasionally happened that after due investigation the fact of possession could not be ascertained, this clause authorized the court in such cases to attach the disputed lands, and to appoint a person to manage them, by collecting the rents, discharging any public demands on them, and paying the profits into court, after paying all necessary expenses. But the courts were enjoined not to resort to this measure except when

Cl. 3.

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when found indispensable after a careful inquiry into the possession of the parties.

But this attachment was not to exempt the lands from the usual responsibility for payment of the public revenue.

Construction of the Court, No. 140, 1813, cl. 3.

If the parties do not attend within reasonable time after summons, so as to admit of the requisite investigation being made, and the attachment of the land in dispute appear necessary for preventing a breach of the peace, attachment may take place.

Construction, 769, 1833. A magistrate, under Sect. 2, Reg. III. 1821, may try appeals from assistant specially empowered to try any suits of dispossession.

Construction, No. 521, 1829, sec. 3, of this Regulation*, not meant to rescind the rule in Sec. 5, Reg. III. 1821. The appeal admissible, though more than 30 days expired, if it be proved that the petitioner was prevented by circumstances totally beyond his control from presenting his petition within the prescribed period.

See the whole Regulation rescinding Sec. 6 of Regulation XV. 1824, and making the orders and decisions of the magistrates and joint magistrates appealable to the Commissioner of circuit.

ACT VII., 1835.

Constructions of the Sudder Court, No. 396, 1825.

The point of relevancy, or otherwise, is best established by the evidence adduced, to prove the complaint of dispossession.

No. 414, 1826.

The authority to cause an attachment is not expressly recognised by Regulation XV. 1824, to vest in the criminal courts, but it may be presumed to exist with analogy to the rule contained in Cl. 3, Sec. 5, Regulation VI. 1813.

No. 525, 1829.

(But the Commissioner of circuit cannot order an attachment.)

No. 415, 1826; No. 640, 1831; No. 689, 1832; nor even for Report, Cl. 6, S. 18, Reg. V. 1831, being intended for criminal cases.

Cases under Regulation XV. 1824, not referrible to a sudder ameen.

No. 434, 1826.

The violent entry of a house is a case of dispossession within Regulation XV. 1824.

No. 448, 1827.

Regulation XV. 1824, was never intended to apply to mere kashtkars, or cultivators of the soil; and (if applicable) in this particular case decision should have been given in favour of the plaintiffs, their possession having been more recent than that of the defendants, and having been acquiesced in by the defendants, without complaint to the court, for some considerable time previous to the occurrence of the present dispute.

No. 453.

The Regulation would be applicable, whatever may be the nature of the property in dispute, but its provisions do not apply to mere kashtkars, or cultivators of the soil, or, in other words, to persons having no right of property in the soil, but merely disputing about the right to cultivate.

No. 475, 1828.

With reference to your† remark, that if without distraint of property an ejectment has actually taken place, in consequence of the ryot being compelled to quit by force or intimidation, and his former possession shall be disputed and denied by the zemindar, you cannot discern to whom the investigation of such a case would belong, the court are of opinion that either the rules of Regulation XLIX. 1793, or those of Regulation VIII. 1819, would be applicable; the former where the dispossession may have been effected by force, and the latter where these means may not have been resorted to.

The declaration contained in Cl. 5, Sec. 18, Regulation VIII. 1819, that it is illegal to oust or disturb resident cultivators, unless under certain stated circumstances, necessarily implies a remedy in case of the contravention of such rule; and the court are of opinion that, in the spirit of the enactment cited, such remedy should be afforded by the judge, on the summary application of the ejected ryot, by an order for his being restored to possession, and his retaining it until the process prescribed by the Regulation shall have been observed.

No. 482, 1828.

The Regulation has been held not applicable to disputes relative to the right of cultivation only; and the court are of opinion that all differences between landholders and their tenants or ryots, involving the question whether the landholder

* Regulation XV. 1824; Regulation II. 1829.

† *i. e.* The Zillah judge, to whom this construction was addressed.

holder can legally oust the tenant or ryot from the lands which the latter considers himself entitled to occupy, should come under the provisions of Regulation XLIX. 1793, or Regulation VIII. 1819.

In reply to question whether the magistrates can award costs to parties suing agreeably to this Regulation, No. 505, 1829.

The criminal courts may, under Sect. 8, Regulation XIV. 1797, adjudge a reimbursement of costs actually incurred upon any prosecution before them, by either of the parties thereto, in particular cases, wherein they consider such reimbursement just and equitable.

Suits for dispossession, to which thicadars* are a party, can only be tried under Regulation XLIX. 1793. No. 546, 1830.
* Farmers.

The supposed case of dispute between ryots, not cognizable under this Regulation. No. 547, 1830.

In reply to the query whether disputes for personal property can be investigated under this Regulation, refer to the preamble of it.

The provisions of the Regulation are only applicable to disputes between persons claiming a proprietary right in the land, or their agents (gomastahs, naibs, &c.). No. 561, 1830.

In disputes regarding land, if the proprietors of the lands are themselves engaged in the dispute, the case is cognizable under Regulation XV. 1824, and not otherwise; but in the case of a mere farmer, if any one dispossess him, or interfere with his rights, that Regulation does not apply, and the farmer must be referred to a summary suit under Regulation XLIX. 1793, for recovery of possession, or to a summary suit for the rent of the lands of which the acts of his opponents have deprived him. No. 568, 1830.

A magistrate has no power under Regulation XV. 1824, to receive arbitration bonds, or confirm or execute awards for the final decision of all matters at issue between the parties. The magistrate's interference under that Regulation is restricted to cases wherein he has reasonable ground to apprehend disturbances; and after he has interfered, his power extends no farther than, after due inquiry, to award that the actual possessor retain possession of the disputed property. No. 571, 1830.

If at any time after a case of dispute has been brought into the magistrate's court, under this Regulation, the parties should wish to refer their respective claims to the decision of arbitrators, they are at liberty to do so; and upon their representing to the magistrate that they have agreed to an adjustment of their dispute in that manner, and satisfying him that there is no further ground to apprehend a breach of the peace, the magistrate should stay all further proceedings in the case.

The parties would then be at liberty to refer their dispute to private arbitration, under Sect. 3, Regulation VI. 1813, and the award, whatever it might be, would be enforced by the civil court, under clause 2 of the same section and Regulation, upon application being made to it by either party within the time prescribed.

See this construction. No. 579, 17 Dec. 1830; Cons. 7 Jan. 1831; No. 75, vol. 2.

The term vakeel, in section 3, means any agent of the parties, duly appointed to act as their vakeels; the amount of their fees should be adjusted between them and their constituents, as in other Foujdaree cases. No. 371.

Though the provisions of the Regulation prohibit a magistrate to award damages for loss of crops, or injuries sustained from dispossession, they do not preclude him from restoring a party wrongfully dispossessed to the possession of land with the crop upon it, although the latter may have been sown by the wrongful dispossessor, as in the case stated. No. 378, 1825.

A dispute between a zemindar and his moostagir, or farmer, not cognizable under this Regulation. A jaidadee tuccanpook, on possession of a moostagir, does not render the case of a quarrel between him and his zemindar cognizable under it. No. 633, 1831.

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If a dispute between a lumbardar and shikmee sharer regards a defined portion of land, the exclusive possession of which is claimed in proprietary right by each party, it is cognizable; but not so if the dispute is merely about the extent of the interest in the joint estate which each party claimed.

No. 652, 1831.
No. 661, 1831.

The magistrate can interfere in cases of indigo disputes only when they may be cognizable under Regulation XV. 1824, as construed by court, C. O. 27 December 1830, in which case he may depute his assistant, under Regulation XI. 1824; but in disputes regarding indigo, not within that Regulation, the inquiry must be made, and final decision passed by the civil court, under Regulation VI. 1823.

No. 374, 1832.

Paragraph 7, C. O. 17 December 1830, expressly authorizes the magistrate to determine boundaries, under Regulation XV. 1824, *i. e. pro tempore.* The magistrate will merely define the boundary of that which was in the possession of the party ousted before the dispute arose, leaving the question of right to be determined by the civil court.

Construction, 855, 1834.

As complaints of violent dispossession from fisheries, tanks, &c. may be taken up under Regulation XLIX. 1793 (Construction No. 28), they are consequently cognizable under Regulation XV. 1824.

Construction 875, 1834.

Regulation VI. 1813, section 5, modified and superseded by Section 2, Regulation XV. 1824.

The circumstance of the proprietor of the land not being a party to the suit is immaterial, as under paragraph 6, C. O. 7 January 1831, the joint magistrate might have made him a party by issuing the perwannah prescribed in Section 3, Regulation XV. 1824.

Construction 886, 1834.

Commissioner of circuit may order a magistrate to take up a case under this Regulation, though magistrate may not think it necessary for the preservation of the peace.

Construction, No. 894, 1834, see Reference to C. O. S. D. A. 15 Nov. 1833, No. 100, p. 92.

Regulation XLIX. 1793, still unrescinded, for cases of forcible dispossession.

No. 1006, 1836.

Regulation XV. 1824, applicable to cases of disputed possession between mortgagers and mortgagees, whenever such disputes may appear to the magistrate likely to terminate in a breach of the peace.

No. 1029, 1836.

If neither of the parties in a suit brought into the magistrate's court, under Regulation XV. 1824, will appear, and produce their evidence and proofs, the magistrate should strike the case off the file, taking such measures as may appear necessary to prevent a breach of the peace, extending even to the attachment of the property in dispute, if deemed necessary to secure such prevention.

Reg. VII. 1822, Sec. 34.

Regulation IV. 1828, and Sect. 4, Regulation IX. 1833.

Construction 113, in Clause 7, Section 15, Regulation VII. 1799.

Regulation XLIX. 1793, and the above clause, compared, S. D. A. vol. i. page 207.

INDIGO REGULATIONS.

Regulation XXXIII. 1795, Benares.
— VI. 1823.
— V. 1830.

Act XVI. 1835.
Act X. 1836.

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Extract from Old Notes.

Section 5, Regulation XV. 1824.

I think it would be well to explain the terms "right to possession," in this section. I know they have been construed by some authorities to mean that the cause must be decided on the original right to the property, in opposition to the principle laid down in Regulation XLIX. 1793; whereas the intention of Regulation XV. 1824, appears to me to have been simply to change the tribunal before which the summary investigations were to be made, in consequence of the offices of judge and magistrate being held in some districts by different persons, and not to make any alteration in the principle on which the investigations and decisions are to be made.

In fact, unless the principles of Regulation XLIX. 1793, and Clause 3, Sec. 5, Regulation VI. 1813, are maintained, the summary process of Regulation XV. 1824, will tend rather to encourage violence than to repress it; for a claimant who really had the right of property on his side, would have a very powerful inducement to eject his adversary by force, or at all events to threaten to do so, knowing that if a summary proceeding ensued, his right would be recognised, and judgment would pass in his favour.

The inducement might not be sufficient to bring about a serious affray, because the fear of severe punishment would operate in a contrary direction; though even in such cases possession of the disputed land would be a set-off against the penalty incurred; but it might lead to minor breaches of the peace, and the claimant would in many such cases consider his possession as more than compensating for the inconvenience of a fine, or short imprisonment.

The only circumstance under which a summary decision on the point of right could be justifiable, is such as is described in Clause 3, Sect. 5, Regulation VI. 1813.

Land, premises, orchards, pasture grounds, fisheries, wells, watercourses, tanks, reservoirs, or the like. The rents, produce, or profits of such lands, premises, &c.

Minute by the Honourable *A. Amos*, Esq., dated the 16th September 1839.

Consultations. 16 Sept. 1839. No. 5.

A complete historical detail of the law, and decisions upon the subject of dispossession, has been furnished by Mr. Millett. It appears to me that the objects we have in view may be accomplished by a very short Act. These objects are,

1. We want to counteract any forcible dispossession when committed by a British subject.

2. We want to apply the remedy in favour of the person actually in possession, whether he have any kind or no kind of title, and whoever the dispossessor may be. Thus we avoid the construction of the Sudder court, that relief from dispossession can only be afforded where the dispossessor or person dispossessed, or one of them, is proprietor, and not a mere ryot.

3. We want to obviate all doubt that a magistrate can give the required relief, and that the aid of a judge is not necessary.

It may be said, 1. That the magistrate will be puzzled to find out which of two parties was in actual possession, and was afterwards dispossessed forcibly by the other.

2. That some power should be given to the magistrate to anticipate a dispossession.

3. That the magistrate cannot determine whether the party dispossessed may have no right whatever to remain on the land.

As to which it may be said, 1. The magistrate sees who is in possession at the time of inquiry; and I should think he ought to be able to form a reasonable conjecture how and when he got in. It must be clear that there has been a fight for the possession, in which he succeeded, and the time of the conflict will probably be ascertained. The only remaining question is, whether the party continuing in possession was in peaceable possession before the time of the conflict. Whether this be easy to ascertain in all cases or not, much is gained by allowing the

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the magistrate forcibly to repossess in those cases, be they few or more, in which he is satisfied that there has been a forcible dispossession.

2. The magistrate, under his general powers, may take steps to prevent a breach of the peace; and if he is not to determine the right to possession, he can have nothing to decide before the breach of the peace is committed. If a party in possession apprehends a forcible attack, he may easily draw the attention of the magistrate or his officers to the fact of his actual possession, the only fact upon which any difficulty can occur in the way of his recovering possession.

3. It is no doubt an inconvenience arising from the Act that it may encourage persons who have no pretence of right to remain upon the land to drive the person clearly entitled to the right of possession to the expense and delay of a regular suit. But for this law, it may be said, the wrongful occupant would most probably move off the land without compelling the person entitled to possession to use force. The answer, perhaps, is, that such a consequence of the law is counterbalanced by putting an end to the violent conflicts which now constantly arise out of boundary disputes, or other disputed claims to land, in which injustice triumphs as often as right, and which, without reference to the merits of claimants, ought at all events to be put down.

I have added to the papers various papers which I received a considerable time ago, respecting assaults and forcible injuries committed by Europeans in the interior.

(signed) *A. Amos.*

ACT —— of 1839.

Consultations. 16 Sept. 1839. No. 6. Enclosure.

It is hereby enacted, that if any person within the presidency of Fort William in Bengal shall be forcibly dispossessed of any land, premises, trees, fisheries, wells, watercourses, tanks, reservoirs, orchards or crops, or other profits of land, (whether such person be a proprietor or farmer of land, or a dependent talookdar, or an under-farmer, or a ryot, or other party in actual possession,) it shall be lawful for any magistrate, without inquiring into the right of possession, or any merits of the claim of the dispossessor, to cause the property to be restored to the person so dispossessed, leaving him to prefer his claim to the property in dispute by a regular suit: provided always that this Act shall not extend to any such property as aforesaid, whereof any person may be so dispossessed as aforesaid, situate, lying or being within the jurisdiction of Her Majesty's Supreme Court at Calcutta.

NOTE by Mr. Officiating Secretary *Grant* (no date).

Consultations. 16 Sept. 1839. No. 7.

1. I have the honour, by direction of the Honourable Mr. Amos, respectfully to submit the following note and Draft Acts, prepared in the hope of facilitating the consideration by the members of government of several points arising out of the papers noted in the margin*.

2. The single object of Regulation XV. of 1824, is to keep the peace, as shown in its preamble; when there is no real belief that a dispute is likely to end in a breach of the peace, no proceedings can be instituted under that Regulation, except by an abuse of it on the part of the magistrate.

3. The Sudder have ruled that Regulation XV. of 1824 can only be applied when a proprietor of land is a party to the dispute. As the peace is broken equally by a battle between farmers and ryots as by one between zemindars, this construction very naturally is found to render the Regulation useless in many cases. The local officers in indigo districts find breaches of the peace of a very serious character often to arise from disputes between the farmer and other farmers, between the farmer, a person pretending to be a farmer, and ryots or other persons not proprietors, about the possession of fields or crops on land farmed by indigo planters under lease from the zemindar. They therefore apply for a law to render Regulation XV. of 1814 applicable to such cases.

4. The

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* From Secretary to the Government of Bengal, dated 5 Feb. 1839, with enclosures.
Note by Mr. Officiating Secretary Millett, not dated.
Minute by the Hon. A. Amos, Esq. dated 16 March 1839.
Draft of Act proposed by the Hon. Mr. Amos.

4. The only reason that I see why that Regulation does not apply to such cases, is the above construction of the Sudder. It has been thought that there is another reason, which is an omission in section 3 of the Regulation, which mentions only "lands or premises, or the right to water for purposes of irrigation;" whereas the preamble mentions "lands, crops, wells, watercourses and other premises;" and section 2 mentions "land and other property." But I humbly conceive that this reason does not exist; because, 1st, the words of the preamble are large enough, and they show the intent of the Regulation very plainly. Wherefore it would seem that "land" in section 3, must be intended to include crops and profits of land. 2dly. The enacting part is merely a modification of Regulation XLIX. of 1793, in which the words used are "land or crops," and those words having been construed to include "fisheries, &c."* are large enough. 3d. The object of the Regulation is to anticipate common cases of affray, and crops are amongst the common causes of such affrays. This view seems proved to be right by two constructions of the Sudder† at least. Such is the view now actually enforced by authority, and therefore upon this point legislation seems unnecessary.

5. If, therefore, the constructions‡ of the Sudder, confining the Regulation to proprietors, could be got over, the object would, as it strikes me, be gained. This might be done, 1st, by a law enacting that the Regulation shall apply to disputes between any persons about the sort of property mentioned, if likely to end in a breach of the peace; or, 2dly, by a law declaratory to the same effect; or, 3dly, by a formal reversal by the judges of the past constructions of the court.

6. The construction, which is the cause of all the difficulty, has been a matter of surprise to competent persons; Regulation XLIX. of 1793 expressly mentions "proprietors, farmers, dependent talookdars, under-farmers, ryots, or other persons. Regulation XV. of 1824 professes to be a mere adjunct, in modification of the former Regulation. The object of both Regulations is the same as stated in the preambles of both, viz. to prevent a certain class of affrays. The latter Regulation has this further object specified, and no other further object, viz. to divert the cases cognizable under the former Regulation by the judge only into the court of the magistrate. There is not a single word traceable in Regulation XV. of 1824, from which the restricted intention imputed to its authors can be inferred. The word "crops" is oddly mentioned in the preamble, if the Regulation does not apply to ryots, the only class of persons to whom "crops" usually belong. If such be construed as the intention, it must be assumed that the authors of the Regulation fell short of their avowed object (the preservation of the peace amongst the agricultural community) in a most unaccountable and even ridiculous manner. The reasons given in the court's first construction to this effect seem, if applicable at all, equally applicable to Regulation XLIX. of 1793, yet it is admitted by other constructions that those reasons do not apply to that last-mentioned Regulation.

7. From some expressions in the papers before government, I am myself inclined to think that the present judges are doubtful of the propriety of the construction, and only follow it because it has been laid down. The court are not debarred, as far as I am aware, from reconsidering and reversing a construction. If the legislative council applies for the decision of the present judges on this point, with reference to the necessity of making a law, and the character of any law to be made, I imagine the judges must consider the point, and decide it, and give the grounds of their decision; and there is always a chance of their deciding so as to obviate the necessity of a law.

8. But there are arguments of weight in favour of a new enacting law, which shall embrace this point, with others. And if any new law be passed, it will be needless

* Construction, No. 28, 1806.

† Construction, No. 453, 1827, the Regulation applicable, whatever the nature of the property in dispute. Construction, No. 855, 1824, to fisheries, &c. as Regulation XLIX. of 1793.

‡ Construction, No. 448, 1829, Regulation XV. of 1824, was never intended to apply to mere cultivators. Construction, No. 453, 1837, nor to persons having no right of property in the soil. Construction, No. 482, 1828, nor to disputes between landlord and tenant, or ryot. Construction, No. 546, 1830, nor to suits in which theckadars (farmers) are parties. Construction, No. 561, 1830, Regulation includes disputes in which persons claiming to be proprietors, or their agents, are parties. Construction, No. 568, 1830, not otherwise. Construction, Nos. 652 & 661, of 1831, indigo disputes included in the above constructions.

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needless to trouble the Sudder about this construction. These arguments depend on the expediency of legislating on new points, which cannot be reached by any mere settlement of the force of the present law, Regulation XV. of 1824.

9. The chief of these points requiring new legislation, seems to be to determine the amenability of British-born subjects, in the cases provided for by Regulation XV. of 1824, to the magistrate's authority, given by that Regulation. The principal inconvenience complained of, to remedy which a law is asked for, arises in the case of Indigo planters, mostly British-born subjects. If Regulation XV. of 1824 clearly does not apply to British-born subjects, no mere explanation or construction of the doubtful provisions of that Regulation will do what is required. Now the question is, if *A.*, a British subject, unlawfully dispossesses a landholder, native or British born, can a magistrate, under the existing Regulation (which is not registered in the Supreme Court), turn *A.* out and restore the former possessor? The opinion seems to be that the magistrate could not. Possibly an argument *contra* might be raised, but even in that case the point, it will be admitted, would be at least doubtful; so that in any case a law would seem requisite, specially determining the question in the affirmative.

10. It seems to be the opinion that the Acts of the government of India, passed since the last Charter Act, which give any power to any officer, without specifying the classes over whom he is to possess it, have given him power in those cases over all classes of persons, including British-born subjects, within that officer's local jurisdiction. According to that opinion, an Act rescinding Regulation XV. of 1824, and re-enacting its intent, free from the possibility of misconstruction without special allusion to British-born subjects, would do all that is required.

11. This raises a very important point, which, as a general question, I respectfully submit for the consideration of the members of government.

12. It is not now generally known that the penal Acts in force in the Mofussil, passed since the constitution of the government of India, do apply to British-born subjects. The British-born inhabitants certainly do not know it, nor, I believe, do the magistrates know it. It can hardly be right to go on legislating with a hidden meaning; therefore it would seem right to call attention generally to the circumstance. But deliberation beforehand may not be amiss, as the announcement will be startling, and may excite a sensation.

13. At any rate, in regard to this Act, either the Act must specially be made applicable to British-born subjects, or magistrates must be specially brought to see that it will apply to them without special mention, or the object which the government has in passing it will practically be missed.

14. I think when an occasion first arises, it may be expected that a question may be raised on the point whether the Acts affecting only the Mofussil do apply to British-born subjects when not specially mentioned. Did the members of the legislative council, when that council began to legislate, know that they were legislating for British-born subjects in the Mofussil by every Mofussil Act, and intend to do so? The question, however, certainly will not be what they knew or really meant, but what they did, and what their meaning was as deducible from the laws they passed. Perhaps there are arguments leading to a legitimate doubt, whether the Acts generally do apply to British-born subjects in the Mofussil. To put British-born subjects for the first time under the ordinary jurisdiction of Mofussil magistrates, *sub silentio*, would be a strange under-hand way of making so important a change in the law of jurisdictions. A catalogue, No. 1, of offences committed by British-born subjects, and cognizable by the Mofussil authorities, under this view of the Acts, contrasted with a similar catalogue, No. 2, of offences not so cognizable, would exhibit a droll state of the law of jurisdictions. There are some special provisions for British-born subjects in the interior which were considered so obviously necessary on opening the interior to such persons, that the Charter Act specially directed the Indian legislature to pass them; now as yet, none of these special provisions have been made, doubtless for good and sufficient reasons of a general character. But when even in these special points it has not been thought fit yet to make British-born subjects liable to magisterial authority in the interior, it would seem inconsistent legislation to make them so specially liable for the very miscellaneous offences that would fall into catalogue, No. 1, as above described. It might be maintained that British-born subjects have not yet been placed within the jurisdiction of Mofussil magistrates; that the original jurisdiction of such magistrates was not local,

local, in so far as such subjects were concerned, because the Regulations originally determining the jurisdiction of Mofussil magistrates did not and could not give them local jurisdiction over such subjects; and that as no Act of the government of India has placed such subjects within their local jurisdiction, such subjects remain without their jurisdiction altogether. This argument might be advanced, admitting that an Act rendered penal by an enactment of the legislative council is penal, if done by a British-born subject in the Mofussil; for it would contend that for such an Act, though penal, he could only be tried by a court, under whose jurisdiction he has been placed by some law binding on him. And it may be remembered that the courts who will determine the question of jurisdiction, will lean against a construction which, besides relating to a penal law, may take from British-born subjects trial by jury.

15. It will not escape attention that any specific provision including British-born subjects in this Act, might tell against the applicability of other Mofussil Acts to that class.

16. Supposing a new law to be determined on, with reference to the necessity of including British-born subjects, the opportunity of amending the law with reference to other points may be taken.

17. One of these relates to thewording of the present law (Sec. 5, Regulation XV. of 1824), which says that the "right to possession" shall be determined summarily by the magistrate. This expression has sometimes been construed so largely as to be equivalent to the right of property, and thus to include the whole merits of the dispute. It will be seen that the proposition of the Sudder contained in the Draft Act now submitted is to give the magistrate authority to "award" possession "to the party who shall appear to be best entitled to it." This would make these cases civil suits, to all intents and purposes; and what advantage is gained by transferring any civil suit from a civil to a criminal court, I do not know. There can be no doubt that Regulation XV. of 1824 was not meant to vary the substantive law of Regulation XLIX. of 1793, and that it was meant only to authorize inquiry into the fact of possession immediately before the dispute in question arose; I understand that the intention of the council is to do no more than this. There is a construction * of the Sudder restricting the meaning of the term "right to possession" in Regulation XV. of 1824, which, I presume, guides the present practice; so no new law would be necessary for this point only; though if a new law becomes necessary otherwise, it might be worded more precisely.

18. If a new law is made, it may be determined whether or not in cases of unauthorized dispossession, the necessity for there being a likelihood of a breach of the peace, in order to authorize a magistrate in restoring possession, may be removed; objections to such a law, as making too extensive a change in the existing law, may perhaps be weakened by a consideration of what, I make bold to say, is at present no uncommon practice, which practice is to assume the likelihood of a breach of the peace, by a legal fiction, whenever the magistrate inclines to take up the case, and often to make no pretence even of the likelihood of a breach of the peace. Such an authority seems not unreasonably given to the magistrate; for forcible dispossession without authority of law seems as fit a reason for magisterial interference, when the property in question is real, as when it is personal.

19. This summary power is no more than is given to the revenue authorities at Bombay, who are also always magisterial authorities, by Clause 2, Sect. 1, Act No. XVI. of 1838. In that Act the time for calling for such interference is limited to six months from the dispossession. By Sec. 5, Regulation II. of 1805, of the Bengal Code, the limit for these summary suits when taken before the civil court is three months from the dispossession, unless good cause of prevention be shown; perhaps one month would be ample, considering the true object of the law. It seems clear that some short limitation is desirable. In the draft prepared, I have followed the law of 1805.

20. It is true that parties dispossessed have now a summary remedy in the civil courts by Regulation XLIX. of 1793. But I think it probable that it would be

* No. 571, 1830, a magistrate can only award that the actual possessor retain possession of the disputed property.

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be found on inquiry that parties do not often avail themselves of this law, and if so, the reason may be that the magistrates' court is found far more speedy and effectual. I have already said, that I believe those courts go beyond the law by receiving all such suits, without much regard to the real likelihood of a breach of the peace. Perhaps, if a reference is made to the Sudder, the judges might be asked if such a provision would be objectionable.

21. I would suggest whether the law would not be improved by adding disputes about the right of use; this would include, more certainly, tanks, ghats, roads, &c., public, or alleged to be public, property, of which, if public, there can be no possession or right to possession.

22. The Honourable Mr. Amos has particularly directed my attention to the authority to interfere, given by the present law to magistrates, in cases of threatened dispossession. It will naturally strike one, that the ordinary powers of the police will prevent or stop an actual affray, and that where no dispossession has been effected, and no affray actually occurred, there is no ground for magisterial interference; also that in such cases, interference, unless it goes to the improper length of deciding on the right of possession, that is to say, the merits of the case, will be of no use. But I think practical men would universally be opposed to a change of the law which should preclude interference in cases of threatened dispossession, and, as it appears to me, with great reason.

23. Certainly magisterial interference in threat of dispossession should only be allowed in cases of *bonâ fide* likelihood of a breach of the peace, as is now the law; but in such cases I think the special power of declaring possession to be in *A.* or *B.* or *C.* very beneficial, over and above the mere general power of dispersing a riotous assembly, or punishing actual breach of the peace. The real use of such a special preventive power, I believe to be confined to cases where the fact of possession is really doubtful; where no party has exclusive possession, or where the authorities cannot discover who has. The decision requisite is not I think, even in the most doubtful cases, precisely a decision as to the right of possession (though that consideration, as an evidence of the fact of possession, may have weight sometimes); but it is merely a decision as to the fact of possession, the effect of which is to settle that fact, before unknown. After such a decision, if there is an affray, you know which party is in the wrong, consequently there are few affrays after such a decision; before such a decision you cannot say who is right and who is wrong, consequently both parties are punished for an affray, one with unjust severity, and one with unjust leniency; or where both believed they had possession, both are punished with great severity, and yet affrays are numerous before such a decision.

24. The thannadar writes to the magistrate that 200 people are collecting on the part of *A.* and *B.*, to fight about a piece of land; the police may or may not be able to prevent an actual affray. As soon as the darogah's back is turned, they assemble again. Is it not beneficial that the magistrate should have the power of summoning both parties, and inquiring into the fact of possession, and saying that *A.* or *B.* is in actual possession, and that the other party must go to a regular suit, and so removing at once the *origo mali.* It was this very point which occasioned the modification by Sect. 5, Regulation VI. 1813, of the old law of Regulation XLIX. of 1793, by which summary suits could not be had in cases only of threatened dispossession.

25. The real use of the law I take to be the decision of the fact of possession, which, in India, is often the most difficult of all points to ascertain. To provide for cases where the fact of possession cannot be determined on a summary inquiry, I would suggest that the power of attaching the disputed land, as given to the judge by Clause 3, Section 5, Regulation VI. of 1813, be given to the magistrate by the new law.

26. As directed, I append for the consideration of the members of government a draft of an Act prepared with reference to the above remarks.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

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Proposed ACT.

1. It is hereby enacted, that Regulation XV. of 1824 of the Bengal Code be repealed.

2. And it is hereby enacted, that whenever any magistrate, or other officer exercising the powers of a magistrate, may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, crops, fisheries, or other profits of land within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on every party* concerned in such dispute to attend his court in person or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute; and the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject in dispute when the dispute arose, and, after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time; and, if necessary, the magistrate or other officer as aforesaid shall put such party in possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

This section is meant simply to enact the true intent of Reg. XV. of 1824.

3. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall be unable to satisfy himself as to what party was in possession of the subject of the dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court.

See para. 25 of note.

4. And it is hereby enacted, that if any party shall prove to the satisfaction of a magistrate or other officer as aforesaid after due inquiry, that he has been without authority of law forcibly dispossessed of any land, premises, water, crops, fisheries, or other profits of land within the jurisdiction of such magistrate or other officer, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall record a proceeding, stating the grounds of his award, and shall order such party to be put back in possession, and maintained in possession, until his right to possession be determined by a competent court; provided that no such order shall be passed, unless the party complaining of having been so dispossessed prefer his claim within three months from the time of such dispossession.

See paras. 18 to 20 of note.

5. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid, within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person or of such class of persons, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession; provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid if the matter be such that the right of use may be daily exercised, unless that right shall have been ordinarily exercised within six months from the date of the institution of the inquiry, or if the matter be such that the right of use can be exercised only occasionally, at periodical intervals, unless the right of use shall have been exercised on the last occasion.

See para. 21 of note.

6. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same as long as it shall remain in legal force, shall be liable on conviction before a magistrate, or other officer with the powers of a magistrate, to be sentenced to fine not exceeding rupees, or to simple imprisonment for a term not exceeding months, or to both.

7. And

* The object of this provision seems so obviously the prevention of breaches of the peace, that I can hardly think it necessary to explain the word "party," as including proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons. But this explanation could be easily added.

7. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner under the regulations and laws that are or may be in force relating to appeals from the orders of magistrates.

The proviso may be made to include the local jurisdiction of the Supreme and Recorder's Court. I am not myself sure that the Act, when properly amended, might not advantageously include those places. The chief magistrate is, I believe, often applied to by poor people in matters of this sort.

8. And it is hereby provided, that this Act shall not extend to any place beyond the limits of the Bengal Presidency.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Consultations.
16 Sept. 1839.
No. 8.

In the Draft Act concerning forcible dispossession.

MINUTE by the Honourable *A. Amos*, Esq., dated the 20th July 1839.

WE are indebted to Mr. Grant and Mr. Millett for very elaborate and useful notes upon the subject of this draft. The object of the papers submitted to us from the government of Bengal, was merely that Regulation XV. of 1824 might be made applicable to disputes between "cultivators," it having been held to be applicable to disputes between "proprietors" merely. Perhaps the Regulation might, by the aid of its preamble, be properly held to extend to cultivators; but this is doubtful, and in fact the Sudder court has for a length of time confined it to proprietors. If, however, this were the only ground for legislation, it might possibly be worth while to ascertain whether the present Sudder court would be willing to reconsider and alter the construction of their predecessors.

But there appear to be other grounds for legislation. First. It would seem that the duty of a magistrate in cases where forcible dispossession is anticipated merely, and the fact of who is in actual possession is doubtful, is not clearly defined by the existing Regulations. Secondly. Where the enjoyment consists in uses only, as of a tank or road, or the like, it may be doubted whether the existing Regulations apply, at least in all cases. Thirdly. It may be thought that the existing Regulations are defective in not specifying a period of limitation during which actual possession must have been enjoyed, or, at least, within which the complaint ought to be made. In regard to restitutions to rights of user at least, I think the user ought to have been of some specified continuance. Fourthly. It may be thought that a power of attaching the property in dispute should in some cases be granted to the magistrate. Fifthly. It may be advisable to take the present opportunity of obviating such ambiguities as arise from the unfortunate departure in the Regulation of 1824, from the terms used in that of 1793, in cases in which most probably the same thing was meant, and of supplying upon the face of the law that meaning which has been given to it by the constructions of the Sudder court in some instances, and which, without reference to such constructions, is by no means obvious. For example, Section 5, Regulation XV. of 1824, says that the "right to possession" shall be determined summarily. The Sudder, No. 571, 1830, say that the magistrate can only award that the "actual possessor" retain possession. The construction also that the terms "land or crops" include fisheries, is perhaps more convenient than legitimate. The descriptions of the litigant parties, and of the disputed property, and of the duties of the authority interposing, are different in terms, at least, in the two Regulations of 1793 and 1824. Sixthly. It may be thought advisable to give a power of summary restitution in cases of an authorized dispossession, even though there has been no breach of the peace, especially, as Mr. Grant observes, that it is the practice of magistrates to conjure up constructive breaches of the peace in such cases.

However, if the law were made applicable, either by construction or legislation, to the case of cultivators not less than proprietors, I am not prepared to say that the above six proposed improvements are so manifest or so important as to call very urgently for legislation.

But I think there is another ground more important than all the above grounds together, which seems to invite legislation; it is that of checking forcible dispossessions executed or threatened by British subjects and other Europeans. I apprehend the Draft Act, in its general terms, would include British subjects as well as every other class of persons.

Mr. Grant proposes some material questions. 1. Will this Act, and do other penal Acts, which are capable of being enforced, or (as is the case with the present Act) which can only be enforced in the Mofussil, include British subjects?

2. Is

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2. Is this the general understanding of the public or of the Mofussil magistrates?

3. Should a declaratory Act as to this point be passed?

I have added a few words to the end of the 7th section, which I think will remove all hesitation (for I do not conceive that there can be any legal doubt) as to the intention and power of the Act, and am not disposed in favour of a declaratory Act, at least on the present occasion.

I have on various occasions pointed out the numerous instances in which, by our penal Acts, British subjects have been rendered punishable by single Mofussil magistrates (in some instances with two years' imprisonment, hard labour and fine), and have also observed, that in the instance of such punishments, it is at least very doubtful whether the British subject punished could avail himself of the remedy by appeal given by unregistered Regulations, and, on the other hand, whether process given by the Regulations, can be applied to the enforcement of such punishments against British subjects. But I think that this matter is too extensive, and involves too many difficult points to be disposed of on the present occasion.

(signed) *A. Amos.*

DRAFT ACT, as amended and approved by the Honourable the President in Council.

Consultations, 16 Sept. 1839. No. 9.

Title, "AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession."

1. Whereas it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to incorporate in a legislative declaration various judicial constructions connected therewith, and to amend the said Regulation, and to extend it to certain cases not hitherto provided for, and to afford relief in cases of forcible dispossession committed by or against persons of every class and description; it is hereby enacted, that Section 5, Regulation VI. of 1813, and Regulation XV. of 1824, of the Bengal Code, be repealed.

2. And it is hereby enacted, that whenever any magistrate, or other officer exercising the powers of a magistrate, may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, crops, fisheries, or other profits of land within the limits of his jurisdiction, he shall record a proceeding stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons) to attend his court, in person or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute; and the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject in dispute when the dispute arose, and after satisfying himself upon that point shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary the magistrate or other officer as aforesaid shall put such party in possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

3. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court; and the provisions of Regulation V. of 1827, regarding attachment by order of a zillah or city court, shall apply to attachments by order of a magistrate or other officer as aforesaid made under this section.

4. And it is hereby enacted, that if any party shall prove, to the satisfaction of a magistrate or other officer as aforesaid, after due inquiry, that he has been, without

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without authority of law, forcibly dispossessed of any land, premises, water, crops, fisheries, or other profits of land within the jurisdiction of such magistrate or other officer, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall record a proceeding stating the grounds of his award, and shall order such party to be put back in possession, and maintained in possession, until his right to possession be determined by a competent court; provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.

5. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies may inquire into the matter; and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession; provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid if the matter be such that the right of use is capable of being exercised at all seasons of the year, unless that right shall have been ordinarily exercised within one month from the date of the institution of the inquiry, or in cases where the right of user exists at particular seasons, unless such right has been exercised without discontinuance, before the dispossession of which complaint is made.

6. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use given under this Act, or refusing obedience thereto, or knowingly contravening the same as long as it shall remain in legal force, shall be liable, on conviction before a magistrate, or other officer with the powers of a magistrate, to be sentenced to fine not exceeding rupees, or to simple imprisonment for a term not exceeding months, or to both.

7. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner under the regulations and laws that are or may be in force relating to appeals from the orders of magistrates, or other officers exercising the powers of magistrates, notwithstanding the party or parties be a British subject or subjects, or otherwise not amenable to any such regulation or law.

8. And it is hereby provided, that this Act shall not extend to any place beyond the limits of the presidency of Fort William in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 427.)

Consultations. 16 Sept. 1839. No. 10.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general.

From Secretary to the Government of Bengal, dated 5 Feb. 1839, with 3 Enclosures, original.
Minute by the Hon. Mr. Robertson, dated 16 Feb. 1839, copy.
Minute by the Hon. Mr. Amos, dated 16 March 1839, copy.
Note by Mr. Millett, no date, original.
Note by Mr. Grant, no date, original.
Minute by the Hon. Mr. Amos, dated 20 July 1839, copy.
Draft of Act, dated 5 Aug. 1839, original.

I AM directed by the Honourable the President in Council to forward to you, to be laid before the Right honourable the Governor-general of India, the accompanying papers, as noted on the margin. The reference from Bengal is on the subject of disputes arising between indigo planters who cultivate or claim to hold lands on lease from zemindars or their tenants, and other persons, and suggesting the expediency of empowering, by a legislative enactment, magistrates to take summary cognizance of such disputes.

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2. The Calcutta Sudder Court, in giving their opinion on the subject, in which opinion the western court also concurred, remarked, that the provisions of Regulation VI. of 1823 were applicable only to the adjustment of claims to crops for the raising of which advances had been given to the ryots. The extension of the right to British subjects to acquire and hold lands in their own names had of course given rise to a different state of things; hence the frequency of disputes between the proprietors of neighbouring factories for the right to cultivate land which each party claimed as included within its holdings. For the settlement of disputes arising from this source, the court recommended that they should be summarily inquired into, and that the magistrates should be empowered, as in other cases of dispute about lands, to decide which party had the best claim.

3. On receipt of this communication, his Honor the Deputy-governor, on the 22d September 1838, requested the Sudder Court to submit the draft of an enactment as proposed.

4. In compliance with this requisition, the Sudder Court, on the 18th of January 1839, in communication with the western court, submited the draft of an Act investing the magistrates with power to take cognizance of disputes regarding the right to cultivate lands for indigo, &c. The proposed law, at the suggestion of the western court, was assimilated to Regulation XV. 1824, so far as to include those cases only in which a breach of the peace was apprehended. The western court had likewise suggested that the provisions of the law should not be confined to indigo, but extended to all crops, or at least to the more valuable crops; the draft submitted by the lower court included only indigo, cotton, coffee, and mulberry crops.

5. In submitting these papers for the consideration of the Supreme Government, the Right honourable the Governor-general will observe, that his Honor the late Deputy-governor of Bengal did not approve the principle of the law proposed, inasmuch as he saw no good reason for having different laws to apply to disputes regarding different crops.

6. It was not thought expedient by his Honor in Council to give to the magistrates, as proposed, any power of passing a summary decision as to the rights of any parties in any disputes. The provisions of Regulation XV. of 1824 upon this point are, he thinks, perhaps ambiguous; but it has been judicially decided that the Regulation in question gives to the magistrate no power of deciding on the merits of the case, but only on the question of actual possession. The President in Council conceives that to give a power thus restricted was certainly the intention of the framers of that Regulation, which he believes was only meant to vest the magistrate with the summary power originally vested in the judge alone; but it was thought highly necessary to prevent breaches of the peace, by enabling magistrates to maintain the possession of persons actually in possession of land, crops, &c. whether such parties are proprietors or ryots, when disputes likely to lead to affrays arise, because constructions which had been put upon Regulation XV. of 1824 had rendered that Regulation in many cases useless. It was thought also highly necessary to give magistrates such powers in the case of British-born subjects, without which provision the object of the reference could not be obtained. It was thought also desirable to take the opportunity of empowering a magistrate to give immediate redress in cases of forcible and illegal dispossession, and to give him sufficient and well-defined power to maintain for the public or for classes of persons the use of roads, ghats, tanks, embankments, &c. when actually enjoyed, until the right of use in contested cases shall be determined by the civil courts. The accompanying Draft Act has accordingly been prepared.

7. In the event of the Right honourable the Governor-general approving of the Draft Act proposed, you are requested to obtain his Lordship's assent to its being published for general information, and its being finally passed without any material alteration.

8. You are requested to return the original papers with the draft of Act herewith sent, with your reply.

I have, &c.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

Fort William, 5 August 1839.

Consultations. 16 Sept. 1839. No. 11.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Legislative.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 427, dated the 5th instant, with enclosures, and draft of a proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession.

2. The Governor-general approving the provisions of that Act, sanctions its publication for general information, and his Lordship's assent, in the usual form for its being finally passed into law, is enclosed herewith.

3. The original enclosures of your letter under acknowledgment are returned herewith.

I have, &c.
(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India,
with the Governor-general.

Simlah, 29 August 1839.

Consultations. 16 Sept. 1839. No. 12. Enclosure. Legislative.

ASSENT of the Right honourable the Governor-general, dated Simla, 29 August 1839.

I DO hereby, under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession, received from the Honourable the President in Council, in Mr. Officiating Secretary Grant's letter, No. 427, dated the 5th instant.

(signed) *Auckland.*

Consultations. 16 Sept. 1839. No. 13.

Fort William, Legislative Department, 16 September 1839.

THE following draft of a proposed Act was read in Council for the first time on the 16th September 1839:—

ACT, No. ——, of 1839.

AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession.

1. WHEREAS it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to incorporate in a legislative declaration various judicial constructions connected therewith, and to amend the said Regulation, and to extend it to certain cases not hitherto provided for, and to afford relief in cases of forcible dispossession committed by or against persons of every class and description.

It is hereby enacted, that Section 5, Regulation VI. of 1813, and Regulation XV. of 1824 of the Bengal Code, be repealed.

2. And it is hereby enacted, that whenever any magistrate, or other officer exercising the powers of a magistrate, may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, crops, fisheries, or other profits of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons) to attend his court in person, or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute; and the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject in dispute when the dispute arose, and after satisfying himself upon that point, shall record a proceeding declaring the party whom

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whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary the magistrate or other officer as aforesaid shall put such party in possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

3. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court; and the provisions of Regulation V. of 1827, regarding attachment by order of a zillah or city court shall apply to attachments by order of a magistrate or other officer as aforesaid made under this section.

4. And it is hereby enacted, that if any party shall prove to the satisfaction of a magistrate or other officer as aforesaid, after due inquiry, that he has been, without authority of law, forcibly dispossessed of any land, premises, water, crops, fisheries, or other profits of land within the jurisdiction of such magistrate or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall record a proceeding, stating the grounds of his award, and shall order such party to be put back in possession and maintained in possession until his right to possession be determined by a competent court, provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.

5. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies may inquire into the matter, and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all seasons of the year, unless that right shall have been ordinarily exercised within one month from the date of the institution of the inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.

6. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall be liable, on conviction before a magistrate or other officer with the powers of a magistrate, to be sentenced to fine not exceeding rupees, or to simple imprisonment for a term not exceeding months, or to both.

7. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner under the regulations and laws that are or may be enforced relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates, notwithstanding the party or parties be a British subject or subjects, or otherwise not amenable to any such regulation or law.

8. And it is hereby provided, that this Act shall not extend to any place beyond the limits of the Presidency of Fort William in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be re-considered at the first meeting of the legislative council of India, after the 16th day of November next.

(signed) *J. P. Grant,*

Officiating Secretary to the Government of India.

(No. 398.)

Consultations 16 Sept. 1839 No. 14.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

No. 501. Similar to G. G. N. W. P.

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 276, of the 5th February last, with its enclosures, and in reply, to forward to you, for the information of the Honourable the Deputy-governor of Bengal, the accompanying printed copies of a proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette. You are requested to obtain, with the permission of the Honourable the Deputy-governor, the observations of judges of the Sudder Court upon the draft.

2. The original papers received with your letter are herewith returned.

I have, &c.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Council Chamber, 16 September 1839.

(No. 1818.)

Consultations. 6 Jan. 1840. No. 32.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

Judicial Department.

IN compliance with the requisition conveyed by your letter (No. 398), dated the 16th September last, I am directed by the Honourable the Deputy-governor of Bengal to transmit for the consideration of the Supreme Government the accompanying * letter from the register of the Nizamut Adawlut, containing the court's observations upon the law it is proposed to enact for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession.

* No. 2915, dated 1st instant.

I have, &c.

Fort William, 12 Nov. 1839. (signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

N. B.—Be good enough to return the enclosure.

(No. 2915.)

Consultations. 6 Jan. 1840. No. 33.

From *J. Hawkins*, Esq. Register, Nizamut Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Enclosure.

Nizamut Adawlut. Present:—R. H. Rattray, W. Braddon, C. Tucker, E. Lee Warner, Esqrs. and Judges; A. Dick, Esq. Temporary Judge.

I AM directed to acknowledge the receipt of your letter, No. 1604, dated 30th September, and in reply, to request you will submit, for the consideration of his Honor the Deputy-governor, the following observations of the court on the subject of the law it is proposed to enact "for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession."

2d. The court are of opinion that the term "other profits of land," at line 5th of section 2, is of too extensive a signification; and they would suggest an alteration of the passage in which it occurs, to the following effect: "Any land, premises, water, fisheries, crops, and other produce of land."

The alteration, if adopted, must also be made in the 4th section.

3d. With reference to that part of section 2, which proposes to invest the magistrates with power to inquire what party was in possession of the subject in dispute when the dispute arose, and to maintain the possession of such party, without

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without reference to the merits of the claims of any party to a right of possession, the court would suggest the addition of a proviso in favour of proprietors and farmers of land exercising the powers vested in them by Sections 3 and 15, Regulation VII. 1799, Section 13, Regulation V. 1812, and Section 18, Regulation VIII. 1819, with a view to the punctual realization of their rents.

4th. It appears to the court that an application to the collector under the provisions of Regulation V. 1827, would not in all cases be necessary, (such, for instance, as the attachment of small portions of land or crops,) but that, on the contrary, the order for attachment might be more effectually enforced by the subordinates of the magistrates. The court would accordingly recommend an alteration of section 3, to the effect that all estates paying revenue to government, and dependent talooks, should be attachable through the instrumentality of the collector, and other subjects of dispute directly by the magistrate himself. Section 3.

5th. As the proposed Act does not rescind any part of Regulation XLIX. 1793, the court would further suggest the addition of a provision declaring that the same cause of action shall not be simultaneously cognizable both by the civil and criminal authorities.

6th. The proposed Act restricts the magistrate's inquiry to the fact of actual possession at the time the dispute arose. But the court observe, that in disputes regarding churs and other newly-formed lands, it is often difficult, if not impossible, to determine which party was in possession; neither party, in point of fact, having had possession of the accretion. They would therefore suggest that a proviso be made for such cases, by empowering the magistrate to dispose of them under the rules laid down in the first four clauses of Section 4, Regulation XI. 1825.

7th. They would also suggest that the rules contained in Clause 2, Section 5, Regulation VI. 1813, be incorporated in the Act, to allow of magistrates referring disputes regarding possession of land to arbitration, with the consent of the parties.

8th. The court do not enter upon the question of appeal from orders passed under the proposed Act, as the subject of appeal to the Nizamut Adawlut in all cases of illegality, from orders passed in other than criminal trials, is already before the government under a separate reference from the court.

I have, &c.

Fort William, 1 Nov. 1839. (signed) *J. Hawkins*,
Register.

Minute by the Honourable *A. Amos*, Esq. dated 20th November 1839.

Consultations. 6 Jan. 1840. No. 34.

Suggestions of Sudder Court for amending Draft Act about dispossession.

1st. The Sudder Court recommend the words "other produce of land" to be subsituted for "other profits of land."

I think this is an improvement.

2d. Proviso suggested, "that nothing in this section contained shall be held to rescind or alter the powers vested in proprietors and farmers of land, by Sections 3 and 15, Regulation VII. of 1799, Section 13, Regulation V. of 1812, and Section 18, Regulation VIII. of 1819, of the Bengal Code, for the realization of rents."

I suppose this proviso is proper. Our secretary will be pleased to examine the wording of it.

3d. An amendment is proposed as to the form of attachment. I suppose this is right. The matter is so technical with reference to Mofussil regulations and practice, that the secretary should be requested to draft the amendment.

4th. An amendment to prevent both a civil and criminal proceeding for the same cause, with reference to Regulation XLIX. of 1793.

5th. Proposal, that as to newly-formed lands by accretion, the right to possession should be determined according to the rules in Section 4, Regulation XI. of 1825, first four clauses.

6th. Proposal to allow of arbitrations by consent, under Clause 2, Section 5, Regulation VI. of 1813.

7th. Suggestion that the question of appeal will be determined by another reference, now before government.

Upon each of the above points, our secretary may be of considerable use to us, by preparing the requisite information.

(signed) *A. Amos.*

(No. 1725.)

Consultations. 6 Jan. 1840. No. 35.

From *M. Smith*, Esq. Officiating Register, Nizamut Adawlut, North Western Provinces, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Sir,

N. A. N. W. P. Present:—W. Lambert, W. Monkton, and B. Tayler, Esqrs. Judges.

With reference to the circumstances stated in paragraph 2, of a letter this day addressed by the court to the secretary to the Governor-general, North Western Provinces, I am directed to transmit herewith a copy of the same, direct for submission to the Honourable the President in Council.

I have, &c.

Allahabad, 22 Nov. 1839. (signed) *M. Smith*, Officiating Register.

(No. 1724.)

From *M. Smith*, Esq. Officiating Register, Nizamut Adawlut, North Western Provinces, to *F. Currie*, Esq. Secretary to the Right honourable the Governor-general, in the Judicial Department, North Western Provinces.

Sir,

N. A. N. W. P. Present:—W. Lambert, W. Monkton, and B. Tayler, Esqrs. Judges.

I am directed to acknowledge the receipt of your letter (No. 2563), dated 18th ultimo, sending printed copies of a proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession, for the observations of the court.

2d. In reply, the court instruct me to request you will represent their regret that, owing to an accidental omission to advert to the period fixed for the reconsideration of the draft of the Act referred to, some delay has been suffered to take place in the submission of their answer, which would not have occurred if they had alluded to the circumstance stated; and it is apprehended that before this communication can reach the presidency, the proposed Act may have passed into law. The court have accordingly thought it best to forward a copy of this letter direct to the officiating secretary to the government of India.

3d. The consideration which the court have given to the draft, with reference to existing Regulations and judicial constructions, has, however, suggested no other remark to them than that they think such parts of Regulation XLIX. of 1793, and Regulation XXXII. of 1803, as provide for summary civil suits for forcible dispossession, as well as such parts of other Regulations as extend those provisions to the Benares and other provinces, should be declared repealed in the present Act.

4th. Should the Act have been already passed, the court would suggest that such declaration of repealment might be suitably included in a separate Act, which they are of opinion is much needed for the better and more effectual adjustment of disputes regarding land, declaring the course to be followed by the civil courts on the institution of a suit by a claimant to land attached by a magistrate under the circumstances contemplated in section 3 of the present draft.

5th. The court would submit that to facilitate the final determination and adjustment of such disputes, must be regarded as a most important object, to meet which the existing law is very defective. At present, the dismissal of the claim of *A.* in no way includes the disposal of the pretensions of *B. C.* and *D.*, the prolonged agitation of which maintains dissension and tendency to breaches of the peace. The Act the court would propose contemplates the simultaneous adjudication of all conflicting claims.

6th. The court would suggest an enactment, requiring that, on the institution of a suit in the civil court by any one person, under the circumstances stated in section 3 of this draft, all persons who may have asserted their rights in the subject of dispute before the magistrate in the criminal court should be served with notices to appear, and each set forth his own, and file an answer to the other's claim in the prescribed form and manner.

7th. Each of the claimants in such suits should be allowed to file his petition on stamped paper, of the value prescribed for miscellaneous petitions, provided that this privilege should be restricted to instances wherein one of the disputing parties might institute a suit within the period of three months from the date of attachment

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ment by the magistrate (deducting the time which might elapse in transcribing the order of that officer, under the rule at present applicable to copies of decrees of the civil court), otherwise each should be required to state his claim on paper bearing a full stamp.

I have, &c.

Allahabad,
22 November 1839.

(signed) *M. Smith*,
Officiating Register.

(True copy.)

(signed) *M. Smith*,
Officiating Register.

NOTE by the Officiating Secretary, dated 10 December 1839.

Consultations.
6 Jan. 1840.
No. 36.
Dispossession Act.

I HAVE the honour, as directed, respectfully to submit an amended draft of the Dispossession Act, revised with particular advertence to the remarks and proposals of the two Sudder courts.

This is done in the amended draft, in sections 2 & 4.

There is no similar proviso in any of the existing Regulations, though the principle of this Act, and that of the existing Regulations (XLIX. of 1793, and XV. of 1824) being the same, if requisite in this Act, the want in those Regulations ought to have been felt. I cannot think that lawful attachment or distraint, disputed causelessly, could be considered by any magistrate as coming within the meaning of this Act, so as to oblige him to give back the property so attached or distrained. Literally I do not think the words would bear such a construction, because lawful possession passed on the attachment, and the dispute was the consequence.

PROPOSALS.—CALCUTTA COURT.

1st Point.—To substitute the word "produce" for "profit."

2d Point.—To add a proviso to Section 2, that "nothing in this section contained shall be held to rescind or alter the powers vested in proprietors and farmers of land by Sections 3 & 15, Regulation VII. of 1799; Section 13, Regulation V. of 1812; and Section 18, Regulation VIII. of 1819, of the Bengal Code, for the realization of rents."

The Act only relates to forcible dispossession, or disturbance of possession.

A private person attaching, if he apprehends resistance, ought to require the aid of the police; he has no right to oust from a tenure, if resisted, without a summary procedure.

And to provide a saving clause for exercise of the legal powers of courts and public officers seems to me certainly a very unnecessary, and perhaps an objectionable measure.

However, as the court raised the question, it may be thought right to add a proviso to this effect.

But at any rate I would suggest, that the proposed citation of the Regulations should be omitted. No powers for recovery of rent are given by Section 13, Regulation V. of 1812, which is cited.

On the contrary, that section restricts or regulates the use of existing powers; and many Regulations not cited give such powers; for instance, the first Regulation of all, and the principal one still that gives any such powers, is Regulation XVII. of 1793, "for empowering landholders and farmers of land to distrain and sell the personal property of under-farmers, ryots, &c.," which is not cited.

It further appears to me that any proviso, restricted as proposed to save powers given by law for realization of rents, would do more harm than good.

Because there are many other powers in the same predicament, which as much require a saving proviso; for instance, power to seize and sell personal property for non-payment of revenue; boats, &c. for non-payment of toll; contraband goods *in transitu*, &c.

Even attachment by a court of justice is in the same predicament; attachment by a zemindar for rent being as much warranted by positive law as attachment by a peon under an order of court. To provide by a saving clause for only one class of cases, leaving many others in the same predicament unprovided for, would, I think, be more dangerous than to provide for none.

Again: I think other parts of the Act may be held as much to want such a proviso as section 2.

Therefore I have suggested a proviso, if it be resolved to have one at all, drawn quite in general terms, saving all lawful seizure, covering the whole Act, and forming a section by itself, viz. section 11.

3d. To make only estates paying revenue to government, and dependent talooks, attachable through the collector.

Regulation V. of 1827, cited in section 3, applies only to "landed property." I have proposed to insert words, which will clearly make the attachment, through the collector, apply only to land. The magistrate will attach all crops, fisheries, produce, &c.

But the collector seems the fit person to attach all land, whether of large or small extent. If the magistrate be allowed to attach, through his own officers, any land, provisions to regulate his attachment, as regards accounting for profits, payment of rent, &c., would be requisite, such as are in Clause 3, Section 5, Regulation VI. of 1813, which have been specifically superseded by Section 2, Regution V. of 1827.

It seems to me that the collector is the fitter person to have to do with managing land, receiving and paying rents, &c.

4th. To prevent the simultaneous conduct of one summary action in the civil courts and another before the magistrate for the same cause of action.

I should have thought that, on general principles, the institution of a case in one competent court would prevent another court of concurrent jurisdiction from taking up the same case, without any express provision for the purpose.

However, it will probably be thought best to make the provision specially, and I have proposed a section (9) accordingly, in which I have included Regulation VII. of 1822 (under which, collectors forming a settlement have the powers of a magistrate under Regulation XV. of 1824, in the cases in question), and I have made the provision reciprocal.

5th. To allow the magistrate to determine (in the first instance) as to the right to possession in churs and new formations, where it is difficult to determine which party had possession.

This appears to me a very useful amendment. But I would propose to restrict this enlargement of the scope of the Act to cases of new formations, where it appears that no party ever had possession. Section 3 will suffice for churs, as for other lands, where there is merely a difficulty of discovering which party had possession.

And where any party is found ever to have had possession, it would seem a departure from the principle of the Act to allow the magistrate to go into the question of rights, merely because he cannot discover who is in possession at the moment. I have proposed section 5 of the amended draft for effecting this amendment.

6th. To incorporate in the Act the Rules of Cl. 2, Sec. 5, Regulation VI. of 1813, to allow magistrates to refer these disputes to arbitration.

To carry this amendment into effect, which also seems to me very useful, I have proposed section 10 of the Draft Act. But it is of more restricted operation than the old clause cited by the court; that clause was made when the civil court was entrusted with the powers now transferred to magistrates in these cases; that clause, unobjectionably, perhaps, allowed the civil judge, in a summary suit of this sort, to refer, by consent, even the question of rights to arbitration, and to execute the award, "if open to no just cause of impeachment," which would determine the right for ever.

I have thought it would be deemed proper to restrict the arbitrators to matter within the jurisdiction of the magistrate's court, which now refers the case, viz. to the fact of possession (except in the chur cases occasionally). It would seem anomalous to allow the magistrate, who could not adjudge the right himself, or even enter on the question of right, to examine into and execute an arbitration award that would settle the right.

7th. Question of appeal not touched upon.

As the general law stands, there will be an appeal from these summary decisions to the sessions judge on the whole case. It may be matter for the consideration of the members of government to allow an appeal only on the relevancy of the Act, that is, on the question of law. At present there is a general appeal from decisions under Regulation XV. of 1824. Experience has fully shown that an appeal on the question of law might be desirable, even as a special appeal from the sessions judge to the Nizamut Adawlut; therefore I believe no one would propose to cut off that appeal from the magistrate to the sessions judge. The appeal on the question of the fact of possession is more open to observation, considering that the sole object of the Act is to make a temporary settlement of a dispute. As the Act is drawn, the law on this point will remain what it now is.

Allahabad Court.

To repeal so much of Reg. XLIX. of 1793, and corresponding Regulations, as relates to

At present there are, in theory, two doors open; one to the magistrate, and one to the judge. What the law is now, this amended draft would leave it in this respect. There is no necessity to repeal the old Regulations as proposed, and on the other hand, there would be no difficulty or inconvenience in so doing.

Unfortunately,

summary suits for possession instituted in the civil courts.

Unfortunately, the three Regulations entire cannot be repealed without raising questions larger than those involved in the present law.

They might be repealed, for they are, practically, dead letter; and on a reference to them, it will probably be thought, with respect to their penal clauses, that it is well they are so.

But subsequent criminal Regulations regarding affrays (Regulation I. of 1822) refer to Regulation XLIX. of 1793, as defining the offence of affray, though I do not see that it does so define that offence. Although, therefore, it would be very neat if this Act repealed the three Regulations in question, and stood forth as a consolidating law of dispossession, there might possibly be inconvenience in that course.

I myself, however, see no valid objection to the entire repeal of those Regulations; but it is right to notice the bearings of the whole question.

2d. To amend the civil procedure of regular suits instituted when the subject of dispute is attached under section 3 of this Act, because nobody can prove possession; by allowing (as it were) all parties but one to file cross-bills on low stamps, and calling on all claimants to do so.

This suggestion, relating to civil procedure, has no connexion with the present Act. If I understand the suggestion rightly, it only affects the question of stamp duties.

If *A.* *B.* and *C.* dispute before the magistrate for possession of land, and the magistrate, because he cannot ascertain which was in possession, attaches the land, it seems clear, there being no fourth claimant for possession, that possession lies between those three.

If *A.* sues in the civil court, he must, of course, sue both *B.* and *C.*, who may defend severally, and if he gains his suit the matter is at an end. *B.* and *C.* may do the same, by each suing the other claimants, or they may wait the issue of *A.*'s suit.

If, as will generally happen, there are only two claimants, one suit must settle the matter, since possession must lie between the two; and as the loser cannot have the right of possession, the gainer, whether plaintiff or defendant, must have it.

Any third party having a claim as against the gainer, who will then be the possessor, can then sue him, but he cannot do so before.

I do not quite see the reason for remitting stamp duties in these, any more than in other, cross-suits, nor the justice of charging the party who claims first with full stamp duty, and all others with low stamp duty. Nor do I see how *D.* *E.* and *F.*, not having been claimants to possession, can be forced into this combat between *A.* *B.* and *C.*, even though they may each have claims for the very same land against one or other of the combatants dependent on the issue.

At any rate, I presume no clause to this effect is proposed to be added to this Act, which is confined to the magistrate's procedure.

Preamble, and Section 8.

An alteration is suggested in the preamble. I find, on examination, that only two judicial constructions are incorporated in the Act, the chief use of the Act being to get rid of the bad effect of several such constructions; therefore I have suggested the omission of the part of the preamble referring to that point; and I have suggested that the applicability of the Act to British subjects be clearly shown in the preamble, as a reason for the Act. Unless the words "British-born subjects" be introduced, it might still appear that the general words "persons of any class or description" were intended only to include native ryots, &c. not proprietors, who had been excluded by constructions of the old law.

If this be approved, the mention of British subjects in section 8 (old section 7) may be omitted, as in the amended draft. There might seem an awkwardness in specifying British subjects only in the clause regarding appeals; for if they are amenable in the original suit, they must be amenable to the appeal.

Section 4.

Section 4 is altered to meet the Resolution come to in Council, when the Act was last mentioned, by showing more clearly that the magistrate is not to proceed without hearing defence, &c.

The same meaning was intended to be conveyed by the words "after due inquiry;" but I understood that it was determined to specify more fully the course of procedure to be adopted before passing an order on a complaint of forcible dispossession. The above points are, with an amended Act, respectfully submitted for consideration and orders.

(signed) *J. P. Grant,*
Officiating Secretary, Government of India.

No. VII.
Suppressi n of Affrays concerning Indigo.

PROPOSED AMENDED ACT BY Mr. *Grant*.

Fort William, Legislative Department,
16 September 1839.

ACT, No. ——, of 1839.

Consultations.
6 Jan. 1840.
No. 37.

AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession, within the Presidency of *Fort William*, in *Bengal*.

I. WHEREAS it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to amend the law as contained in that Regulation, for preventing affrays concerning the possession of land, and for giving relief in cases of forcible dispossession, and to extend it to cases not hitherto provided for, and to make it applicable to persons of every class or description, whether British-born subjects or others;

It is hereby enacted, that Section 5, Regulation VI. of 1813, and Regulation XV. of 1824, of the Bengal Code, be repealed.

II. And it is hereby enacted, that whenever any magistrate, or other officer exercising the powers of a magistrate, may be certified that a dispute, likely to induce a breach of the peace, exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons) to attend his court, in person or by agent, within a reasonable time, and to give in a written statement of their respective claims, as respects the fact of actual possession of the subject of dispute; and the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject of dispute when the dispute arose, and, after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary, the magistrate or other officer as aforesaid shall put such party into possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

III. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court; and if the subject of dispute be land, the provisions of Regulation V. of 1827, regarding attachment by order of a zillah or city court, shall apply to attachments by order of a magistrate or other officer as aforesaid, made under this section.

IV. And it is hereby enacted, that if any party shall complain to a magistrate or other officer as aforesaid, that he has been, without authority of law, forcibly dispossessed of any land, premises, water, fisheries, crops, or other produce of land, within the jurisdiction of such magistrate or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall require the party or parties complained against to appear and make defence, in person or by agent, within a reasonable time; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he shall record a proceeding, ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court; provided that no such order shall be passed, unless the party complaining of having been so dispossessed, prefer his claim within one month from the time of such dispossession.

V. And it is hereby enacted, that if, in cases instituted under this Act, the subject of dispute be newly-formed land, whereof it shall appear to the magistrate or other officer as aforesaid that no party has ever had possession, the magistrate or other officer as aforesaid shall award possession to the party to whom he may determine that the right of possession belongs, according to law or custom, and shall maintain that party in possession, until the right to possession be determined by a competent court.

VI. And

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VI. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.

VII. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall be liable, on conviction before a magistrate or other officer with the powers of a magistrate, to be sentenced to simple imprisonment for a term not exceeding six months, or to fine not exceeding 200 rupees, commutable if not paid to a period of simple imprisonment not exceeding six months, or to both.

VIII. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner, under the Regulations and Laws that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates.

IX. And it is hereby enacted, that the institution of proceedings under this Act shall bar the institution of proceedings under Regulation XLIX. of 1793, Regulation XIV. of 1795, Regulation XXXII. of 1803, or Regulation III. of 1822, for the same cause of action; and in like manner the institution of proceedings under any of the said Regulations shall bar the institution of proceedings under this Act.

X. And it is hereby enacted, that in cases instituted under this Act, the magistrate or other officer as aforesaid is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award shall be executed as if it were the award of such magistrate or other officer as aforesaid.

XI. And it is hereby provided that nothing in this Act contained shall affect the legal exercise of any right of attachment or seizure vested by law in any parties.

XII. And it is hereby further provided, that this Act shall not extend to any place beyond the limits of the presidency of Fort William, in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Fort William, Legislative Department,
6 January 1840.

Consultations. 6 Jan. 1840. No. 38.

THE following extract from the proceedings of the Honourable the President in Council, in the Legislative Department, under date the 6th January 1840, is published for general information:

Read a second time the draft of a proposed Act, dated the 16th September 1839, and published in the Calcutta Gazette of the 21st of the same month, for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession within the presidency of Fort William, in Bengal.

Resolution.—The Honourable the President of the Council of India in Council resolves that the following amended Draft Act on the subject be republished for general information:

No. VII.
Suppression of Affrays concerning Indigo.

ACT, No. ——, of 1840.

AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession, within the Presidency of *Fort William*, in *Bengal*.

I. WHEREAS it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to amend the law for preventing affrays concerning the possession of land, and for giving relief in cases of forcible dispossession, and to extend it to cases not hitherto provided for, and to make it applicable to persons of every class or description, whether British-born subjects or others;

It is hereby enacted, that Regulation XLIX. of 1793, Regulation XIV. of 1795, Regulation XXXII. of 1803, Section 5, Regulation VI. of 1813, Regulation XV. of 1824, and Regulation II. of 1829, of the Bengal Code, together with so much of any Regulations as extends any of the above Regulations or parts of Regulations to any places within the presidency of Fort William, in Bengal, be repealed.

II. And it is hereby enacted, that whenever any magistrate or other officer exercising the powers of a magistrate may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots or other persons) to attend his court, in person or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. And the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject of dispute when the dispute arose, and after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary, the magistrate or other officer as aforesaid shall put such party into possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

III. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall, in the cases mentioned in section 2 of this Act, be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court, giving the collector information of the attachment; and if the subject of dispute be land, the provisions of Regulation V. of 1827 regarding attachment by order of a zillah or city court, shall apply to attachments by order of a magistrate or other officer as aforesaid, made under this section.

IV. And it is hereby enacted, that if any party shall complain to a magistrate or other officer as aforesaid, that he has been, without authority of law, forcibly dispossessed of any land, premises, water, fisheries, crops, or other produce of land, within the jurisdiction of such magistrate or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot or otherwise, the magistrate or other officer as aforesaid shall require the party or parties complained against, and any other parties concerned, to appear and make defence, in person or by agent, within a reasonable time; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he shall record a proceeding, ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court; provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.

V. And it is hereby enacted, that if in cases instituted under this Act, the subject of dispute be newly-formed land, whereof it shall appear to the magistrate or other officer as aforesaid that no party has ever had possession, the magistrate or other officer as aforesaid shall award possession to the party to whom the right of possession belongs according to law or custom, and shall maintain that party

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party in possession until the right to possession be determined by a competent court.

VI. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.

VII. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall be liable, on conviction before a magistrate or other officer with the powers of a magistrate, to be sentenced to simple imprisonment for a term not exceeding six months, or to fine not exceeding 200 rupees, commutable if not paid to a period of simple imprisonment not exceeding six months, or to both imprisonment and fine as aforesaid.

VIII. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner, under the Regulations and Laws that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates.

IX. And it is hereby enacted, that in cases instituted under this Act the magistrate or other officer as aforesaid is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award shall be executed as if it were the award of such magistrate or other officer as aforesaid.

X. And it is hereby further provided, that this Act shall not extend to any place beyond the limits of the Presidency of Fort William, in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

Ordered, that the amended draft now read be published for general information.

Ordered, that the said draft be re-considered at the first meeting of the Legislative Council of India, after the 6th day of February next.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 47.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to the Register of the Sudder Dewanny Adawlut at the Presidency.

Consultations. 6 Jan. 1840. No. 39.

Sir,

I AM directed by the Honourable the President in Council, with reference to your letter to Mr. Secretary Halliday, dated the 1st November last (No. 2915), to request that you will lay before the judges for their information, and any remarks that may seem requisite, the accompanying amended draft of an Act for preventing affrays concerning the possession of land, &c., read for the second time in Council this day.

Legislative Dep.

2. The several suggestions made by the judges in your letter above referred to, have been taken into consideration, and have, as will be observed, to a great extent been adopted by the Legislative Council.

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Suppression of Affrays concerning Indigo.

3. It does not appear to the President in Council to be necessary to add the proviso suggested in the third paragraph of your letter.

Regulations XLIX. of 1793, and XV. of 1824.

The principle of the proposed Act does not differ from that of the existing Regulations; there is no similar proviso in them, and the want of one has not been felt, which his Honor in Council thinks must have been the case were any such proviso really necessary. His Honor in Council thinks there is little reason to fear that lawful attachment or distraint could be considered by any magistrate as coming within the meaning of this Act, so as to require or authorize him to give back the property so attached or distrained. Such a proviso is obviously not necessary in respect to Section 4, which specifies forcible dispossession, "without authority of law." And his Honor in Council does not think that the words of Section 2, quoted in your letter, would bear the construction anticipated. Section 2 only applies to cases likely to induce a breach of the peace; that is, to cases where force is used, or likely to be used; for if an attachment lawfully executed, whether by the assistance of the police or otherwise, were to be causelessly disputed subsequently in such a manner as to make a breach of the peace likely to ensue, that is to say, with force, or show of force, as lawful possession passed on the attachment, in consequence of which the dispute arose, it could not with propriety be said that the party lawfully dispossessed was in possession of the subject of dispute when the dispute arose.

And if a lawful attachment by a zemindar, or other individual, be attempted, and be resisted with force, or show of force, his Honor in Council apprehends that such person ought to apply, according to the Regulations, for the assistance of the police, and would not be warranted in using force otherwise, and ought not to be supported in so doing.

4. The President in Council observes, that the lawful exercise of lawful attachments by a court of justice, or by a revenue officer, in numerous cases is in the same predicament with the lawful exercise of lawful attachments by zemindars and certain other private individuals; yet a proviso saving such attachment has not been suggested, and indeed would seem obviously superfluous, even if not in itself objectionable.

5. If such a proviso be not absolutely unnecessary, it would seem to his Honor in Council much better omitted.

6. At any rate, if adopted, his Honor in Council thinks it should be expressed in the most general terms possible.

The special proviso suggested in your letter would, he thinks, have an effect the contrary of what is intended, for by saving some specified attachments it would cast a doubt on others no less warranted by law; for example, seizures by landholders, under Regulation XVII. of 1793, by officers of justice or revenue, under the general Regulations, &c.

7. The President in Council will be glad to be favoured with the opinion of the judges, as to the absolute necessity of a proviso of this sort; he directs me to mention that this point has not been noticed by the judges of the Sudder court, at Allahabad. If, upon full consideration, it be held that a proviso is absolutely necessary to save lawful processes, the President in Council would propose to word it as entered on the margin.

"And it is hereby provided that nothing in this Act contained shall affect the legal exercise of any right of attachment or seizure vested by law in any parties."

8. I am directed to forward herewith a copy of the correspondence which has taken place with the Sudder court at Allahabad, on the subject mentioned in this letter.

I have, &c.

Council Chamber
6 January 1840.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

(No. 30.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *M. Smith*, Esq. Officiating Register to the Sudder Dewanny Adawlut, Allahabad. Consultations. 6 Jan. 1840. No. 40.

Sir,

I AM directed by the Honourable the President in Council, with reference to your letter, No. 1725, of the 22d November last, to request that you will lay before the judges for their information, and any remarks that may seem requisite, the accompanying amended draft of an Act for preventing affrays concerning the possession of land, &c., read for the second time in Council this day. Legislative.

2. The judges will observe, with advertence to the first suggestions contained in your letter, that it is thought advisable to repeal completely the Regulations to which you have alluded. The President in Council believes the penal provisions of those Regulations to have been, in practice, almost entirely dead letter, and he conceives them to be open to objections of principle. His Honor in Council is aware that Regulation I. of 1822, Sect. 3, speaks of "affrays as defined in Regulation XLIX. of 1793, and Regulation XXXII. of 1803;" but on referring to those Regulations, he does not perceive that they contain any definition of the word "affray;" and even supposing those Regulations actually to define or explain that word, he conceives that their repeal cannot in any way affect the meaning of the word as used in later Regulations in the same sense.

3. The suggestions conveyed in the latter part of your letter, as they relate to a proposed change of the process of the civil courts in regular suits, need not be taken up in connexion with the Act now under discussion.

4. I am directed to forward herewith a copy of the correspondence which has taken place with the Sudder court at Calcutta, on the subject mentioned in this letter.

I have, &c.

Fort William,
6 January 1840.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

(No. 34.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Secretary to the Government of India, with the Governor-general. Consultations. 6 Jan. 1840. No. 41.

Sir,

I AM directed by the Honourable the President in Council to forward to you, to be laid before the Right hon. the Governor-general of India, the accompanying printed copy of the draft of a proposed amended Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession within the presidency of Fort William, in Bengal, which has been read in Council for the second time on this date, and will be published in the Calcutta Gazette for general information. Legislative Dep.

Copies of papers connected therewith, as noted on the margin, are also herewith forwarded. If his Lordship approve of the proposed enactments, you are requested to procure his further assent to its being passed without any material alteration.

Letter from Secretary to the Government of Bengal, dated 12 November 1839, with Enclosures.
Minute by Mr. Amos, dated 20 November 1839.
Letter from the Officiating Secretary to the Sudder Court, dated 22 Nov. 1839, with Enclosures.
Note by Mr. Officiating Secretary Grant, dated 10 December 1839.
Letter to Register of the Sudder Court, at the Foujdarry and at Allahabad, dated 6 Jan. 1840.

I have, &c.

Fort William,
6 January 1840.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

(No. 204.)

Consultations. 17 Feb. 1840. No. 16.

From *J. Hawkins*, Esq. Register of Sudder Dewanny Adawlut, to *J. P. Grant*, Esq. Secretary to the Government of India, in the Judicial Department.

Sudder Dewanny Adawlut.

Present:–R. H. Rattray, C. Tucker and E. Lee Warner, Esqrs. Judges; A. Dick and J. F. M. Reid, Esqrs. Temporary Judges.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 47, dated 6th instant, together with its enclosures, regarding the proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession; and to request in reply, that you will submit the following observations on the subject for the consideration of his Honor the Vice-president in Council.

2. With reference to the observations conveyed in your third and following paragraphs, I am instructed to observe, that as the several provisions which recognise the right of dispossession or attachment by landholders and others, adverted to in the third paragraph of my letter, No. 2915, to the address of Mr. Secretary Halliday, are not repealed by the proposed Act, the court do not consider a proviso of the nature previously suggested to be absolutely necessary; but they are of opinion that the proviso entered in the margin, at paragraph 7 of your letter, would obviate all doubt, and render the Act much more complete; and they would accordingly recommend its adoption.

3. Had it not been for the decided opinion expressed by his Honor in Council in the second paragraph of your letter to the Register of the Allahabad court of the 6th instant, as to the objectionable character of the penal provisions of Regulation XLIX. of 1793, the court would have suggested the expediency of re-considering that part of the proposed Act which provides for the entire repeal of that Regulation. The Regulation contains three provisions, which appear to the court to be important, and not altogether of an useless or objectionable tendency. The first of these is, that any party claiming land who employs force to obtain possession, forfeits his title to the disputed property; the second authorizes the punishment of both parties, should both have recourse to illegal means, and the confiscation of the property itself which is the subject of contention; and the third declares the liability to punishment of a party instigating or conniving at an affray, though not present at its occurrence. The forfeiture of all right to the property by the aggressing party, and the liability of the property itself to confiscation, will of course be superseded by the repeal of Regulation XLIX. of 1793. The Mahomedan law will probably provide for the punishment of parties concerned in an affray, whether actually or constructively present; but the court are apprehensive that the repeal of the law which contains express declarations to that effect, without the introduction of some similar provision in the repealing enactment, may lead to misconception and serious evil.

I have, &c.

Fort William,
17 January 1840.

(signed) *J. Hawkins*, Register.

Consultations. 17 Feb. 1840. No. 17.

From *T. H. Maddock*, Esq. Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Legislative.

Sir,

THE Governor-general having approved the provisions of the amended proposed Act for preventing affrays concerning the possession of lands, and for providing relief in cases of dispossession, received with your letter, No. 34, dated the 6th instant, I am desired to enclose his Lordship's assent in the usual form to pass that Act into law.

I have, &c.

Camp, Nuddee Gaon,
23 January 1840.

(signed) *T. H. Maddock*,
Secretary to the Government of India,
with the Governor-general.

ASSENT of the Right honourable the Governor-general; Camp, Nuddy Gaon, dated 23 January 1840.

Consultations. 17 Feb. 1840. No. 18. Enclosure. Legislative Dep.

I DO hereby, under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed amended Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession within the presidency of Fort William, in Bengal, received from the Honourable the President in Council in Mr. Officiating Secretary Grant's letter, No. 34, dated the 6th instant.

(signed) *Auckland.*

(No. 190.)

From *M. Smith*, Esq. Officiating Register of Sudder Court, Allahabad, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Consultations. 17 Feb. 1840. No. 19.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 30, dated 6th instant, enclosing an amended draft of a proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession, together with the transcript of correspondence thereon with the Nizamut Adawlut in Calcutta, as connected with the same subject.

N. A. N. W. P. Present:—W. Lambert, Esq., Judge.

2. It is to be regretted that this communication has been made at a period when only one judge is present with the court, more especially since the early date fixed on for the reconsideration of the amended draft (the first meeting of the council after the 6th proximo,) precludes the postponement of a reply till the arrival of other judges, a measure which would otherwise have been more satisfactory to the court.

3. Adverting, however, to what more immediately calls for an expression of their opinion in reference to the correspondence, copy of which has accompanied your letter, the court have instructed me to state that they consider it would be advisable to comprehend in the Act the proviso advocated by the Calcutta court, and worded as in the margin of paragraph 7 of your letter to the register of that court, dated 6th instant.

I have, &c.

(signed) *M. Smith*,
Officiating Register.

Allahabad, 31 January 1840.

ACT, No. IV., of 1840.

Passed by the Right honourable the Governor-general of India in Council, on 17 February 1840.

Consultations. 17 Feb. 1840. No. 20.

AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession, within the Presidency of *Fort William*, in *Bengal*.

I. WHEREAS it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to amend the law for preventing affrays concerning the possession of land, and for giving relief in cases of forcible dispossession, and to extend it to cases not hitherto provided for, and to make it applicable to persons of every class or description, whether British-born subjects or others;

It is hereby enacted, that Regulation XLIX. of 1793, Regulation XIV. of 1795, Regulation XXXII. of 1803, Section 5, Regulation VI. of 1813, Regulation XV. of 1824, and Regulation II. of 1829, of the Bengal Code, together with so much of any Regulations as extends any of the above Regulations, or parts of Regulations, to any places within the Presidency of Fort William, in Bengal, be repealed.

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Suppression of Affrays concerning Indigo.

II. And it is hereby enacted, that whenever any magistrate or other officer exercising the powers of a magistrate may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute, (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons,) to attend his court, in person or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. And the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject of dispute when the dispute arose, and after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary the magistrate or other officer as aforesaid shall put such party into possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

III. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall, in the cases mentioned in section 2 of this Act, be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court, giving the collector information of the attachment; and if the subject of dispute be land, the provisions of Regulation V. of 1827, regarding attachment by order of a zillah or city court, shall apply to attachments by order of a magistrate or other officer as aforesaid made under this section.

IV. And it is hereby enacted, that if any party shall complain to a magistrate or other officer as aforesaid, that he has been, without authority of law, forcibly dispossessed of any land, premises, water, fisheries, crops, or other produce of land within the jurisdiction of such magistrate or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall require the party or parties complained against, and any other parties concerned, to appear and make defence, in person or by agent, within a reasonable time; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he shall record a proceeding ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court; provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.

V. And it is hereby enacted, that if, in cases instituted under this Act, the subject of dispute be newly-formed land, whereof it shall appear to the magistrate or other officer as aforesaid that no party has ever had possession, the magistrate or other officer as aforesaid shall award possession to the party to whom the right of possession belongs according to law or custom, and shall maintain that party in possession until the right to possession be determined by a competent court.

VI. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies may inquire into the matter, and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within

No. VII.
Suppression of Affrays concerning Indigo.

within three months from the date of the institution of the inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.

VII. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall, together with all persons aiding and abetting, be liable, on conviction before a magistrate or other officer with the powers of a magistrate, to be sentenced to simple imprisonment for a term not exceeding six months, or to fine not exceeding 200 rupees, commutable, if not paid, to a period of simple imprisonment not exceeding six months, or to both imprisonment and fine, as aforesaid.

VIII. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner, under the Regulations and Laws that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates.

IX. And it is hereby enacted, that in cases instituted under this Act the magistrate or other officer as aforesaid is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award shall be executed as if it were the award of such magistrate or other officer as aforesaid.

X. And it is hereby provided, that nothing in this Act contained shall affect the legal exercise of any right of attachment or seizure vested by law in any parties.

XI. And it is hereby further provided, that this Act shall not extend to any place beyond the limits of the Presidency of Fort William in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

(No. 665.)

From *R. N. C. Hamilton*, Esq. Officiating Secretary to the Lieutenant-governor, North Western Provinces, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department, Fort William.

Consultations. 23 March 1840. No. 15.

Sir,

With reference to Mr. Officiating Secretary Grant's letter, No. 501, dated the 16th September last, I am directed by the Honourable the Lieutenant-governor to transmit, for the information of the Right honourable the Governor-general of India in Council, the annexed copy of a letter this day addressed to the Officiating Register of the Nizamut Adawlut at Allahabad. Judicial Dep.

I have, &c.

(signed) *R. N. C. Hamilton*,
Officiating Secretary to the Lieutenant-governor,
Camp, Mynpoorey, 24 February 1840. North Western Provinces.

(No. 664.)

From *R. N. C. Hamilton*, Esq. Officiating Secretary to the Lieutenant-governor, North Western Provinces, to *M. Smith*, Esq. Officiating Register, Nizamut Adawlut, North Western Provinces, Allahabad.

Sir,

I am directed by the Honourable the Lieutenant-governor to acknowledge the receipt of your letter, No. 1724, dated 22d November last, submitting the court's observations Judicial Dep.

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Suppression of Affrays concerning Indigo.

observations on the proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession.

2. The court having forwarded a copy of their communication direct to the Governor of India, no further orders appear to be necessary at present from the Lieutenant-governor; but the court can revive the subject discussed in paragraph 3 to end of your letter, should it be expedient.

I am, &c.

(signed) *R. N. C. Hamilton,*
Officiating Secretary to the Lieutenant-governor,
Camp, Mynpoorey, 24 February 1840. North Western Provinces.

(True copy.)

(signed) *R. N. C. Hamilton,*
Officiating Secretary to the Lieutenant-governor,
North Western Provinces.

— (B.) No. I. —

(B.) No. I.
Relative to Printing the Report on Slavery.

RELATIVE TO PRINTING THE REPORT ON SLAVERY.

(No. 8.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *T. H. Maddock*, Esq. Secretary to Government of India, Legislative Department.

Legis. Cons.
27 April 1840.
No. 8.

Sir,

The Report at large on the state of Indian Slavery, which the Law Commissioners will submit to the Right honourable the Governor-general of India in Council, will include,

I. A review of the Evils resulting from Slavery in India, founded on the Evidence taken by the Law Commission, and Official Documents to which they have had access, with suggestions of remedial measures.

II. A Digest of such Evidence and Documents, divided into Sections, applicable severally to the Provinces dependent on the three Presidencies.

III. Appendix, containing Evidence taken and Official Documents collected by the Law Commission, and not yet printed.

2. The whole, it is computed, will occupy about 1,850 pages of printing, of which 140 are now printed, being part of the third of the above subdivisions; the remaining part of the same third subdivision will occupy about 73 printed pages.

3. On a reference to the superintendent of the Military Orphan Press, the Law Commissioners find, as appears by the letter hereunto annexed, that to pass through the press the whole of the imprinted matter will require the delay of about four or five months, and to effect it in that time there must be no interruption, and the press must have extra printers. It is apprehended that the first and second of the above subdivisions will, from the nature of them, as consisting of composition, and not of official returns, require much more correction than the third part.

4. To obviate the inconvenience of the delay, the Law Commissioners request permission to employ another press in printing simultaneously all or such parts of the two first subdivisions as may be found convenient.

They solicit this permission, because they understand that the orders of Government require that all public printing business be sent to the Military Orphan Press.

I have, &c.

Indian Law Commission,
4 April 1840.

(signed) *J. C. C. Sutherland*,
Secretary.

(B.) No. I. Relative to Printing the Report on Slavery.

From *G. H. Huttmann*, Esq. Superintendent Orphan Press, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Dear Sir,

Reckoning, as you say, the Appendix now passing through the press to make 1,800 or 1,900 pages foolscap, and no further interruptions occurring either in supply of copy or detention of proofs, I calculate the whole can be got out in four or five months. Additional hands shall be put on, and not an hour lost on the work.

I am, &c.

Orphan Press, 4 April 1840.

(signed) *G. H. Huttmann*, Superintendent.

(True copy.)

(signed) *J. C. C. Sutherland*, Secretary.

(No. 210.)

Legis. Cons. 27 April 1840. No. 9.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

I have the honour to acknowledge the receipt of your letter, No. 8, dated the 4th instant, and to inform you in reply, that the Right honourable the Governor-general in Council sees no objection to the employment of another press for printing the Report on Indian Slavery, should the Military Orphan Press already engaged on this work be unable to complete it within the requisite time; but if the latter press be able to complete the work within the time and in the manner desired by the Law Commissioners, it is his Lordship's opinion that the preference should be given to it.

I have, &c.

Council Chambers, 27 April 1840.

(signed) *T. H. Maddock*, Secretary to Government of India.

—(B.) No. II.—

(B.) No. II. Questions which occupy the immediate Attention of the Commissioners.

QUESTIONS WHICH OCCUPY THE IMMEDIATE ATTENTION OF THE COMMISSIONERS.

(No. 17.)

Legis. Cons. 3 August 1840. No. 2.

From *J. C. Sutherland*, Esq. Secretary to the Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department.

Sir,

The Law Commission having now so far completed their Report upon Slavery in India, as to be released from constant attention to it, think that it may be satisfactory to Government to know upon what other subjects they are at present occupied. They therefore direct me to state, for the information of Government, that they are preparing Reports; viz.—

1. Two Reports arising out of the petition of the East Indians. The first upon the substantive law to be applied in the Mofussil to that class of persons, and other classes whose legal condition may be considered doubtful. The second a Report upon the judicature by which the causes, civil and criminal, of those classes

(B.) No. II.
Questions which occupy the immediate Attention of the Commissioners.

classes are to be decided, involving the question of the introduction of juries, or some modification of them, into the Mofussil.

2. A report upon judicature and procedure in the places subject to the jurisdiction of Her Majesty's courts. This will comprise the report (which has been already announced) upon the courts of requests, that upon the introduction of *vivâ voce* examinations in equity, and that upon the recorder's court in the Straits. These three subjects appear to us to form properly so many chapters of a report bearing the title above stated, and we propose, therefore, to treat them in that manner, although, in the references which called our attention to them, they were either presented separately, or in combinations different from that which seems to us the most methodical and the most convenient.

3. The Law Commissioners have again had under consideration the question of abolishing the Provincial Courts of Appeal and Circuit under the Presidency of Madras, with reference to the letter from Mr. Officiating Secretary Grant, dated 3d June 1839, and are about to submit a report on the subject. No. 224.

4. As connected with the last-mentioned subject, they have resumed the consideration of the question referred to them by Mr. Secretary Macnaghten's letter, dated the 4th July 1836, "of the powers to be confided to single judges of the Sudder Courts," and will submit their sentiments upon it at an early period. In the meantime they request that the Right honourable the Governor-general in Council will be pleased to communicate to them any reports that may be before Government bearing upon the question, with reference to the state of business in the Sudder Dewanny and Nizamut Adawlut at Calcutta, or Bombay, or elsewhere.

His Lordship in Council is aware that the Law Commission had consulted the principal judicial authorities, with a view to ascertain what objections might exist to a law legalizing the re-marriage of Hindoo widows. Such law it was hoped would tend to diminish the crime of child-murder. The inquiry has produced a discussion on the legality of such re-marriages under the Hindoo law and usage in some places. The Law Commissioners are preparing a short report, showing the result of their inquiries. *Vide* Letter of the Law Commission, of 4 July 1837. No. 41.

I have, &c.

Indian Law Commission, 11 July 1840. (signed) *J. C. Sutherland*, Secretary.

(No. 339.)

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *J. C. Sutherland*, Esq. Secretary to the Indian Law Commission. Legis. Cons. 3 August 1840. No. 3.

Sir,

I AM directed by the Right honourable the Governor-general in Council to acknowledge the receipt of your letter (No. 17) dated the 11th instant, and in reply to state, that his Lordship in Council will look with interest for reports from the Commission, upon the subjects now before them. Legislative Dep.

2. It is very desirable that the Commission should speedily place the Government in possession of their views upon those amendments in the law of procedure, which must take a prominent part in all extensive legal reforms; and it is obvious that much of what is noticed in your first section, and the whole of the subjects of the 3d and 4th, are but portions of the code of procedure, and therefore belong to that class of questions which, in his Lordship's opinion, require your earliest attention.

3. Upon understanding that the report alluded to under your second head will be furnished at no distant date, his Lordship in Council approves the combination of subjects proposed by the Commission; but I am desired to observe, that the subjects which it is intended to combine in one report, are each, in his Lordship's estimation, of sufficient urgency and importance to require separate and distinct consideration, while the time which has already elapsed since they were first proposed to the Commission, especially in the case of the court of requests, and the great necessity which has long been felt for the improvement and extension of that court, render it very desirable that the propositions of the Commissioners should be matured, and laid before Government with as little

(B.) No. II.
Questions which occupy the immediate Attention of the Commissioners.

further delay as may be possible. Should it then be found that the plan of combining these, or any other portions of the code of procedure, in one general report, or in one or more comprehensive chapters of a general report, is likely to occasion such delay as to prevent the receipt of the report by Government before the termination of the present year (1840), his Lordship would decidedly prefer to receive reports on each subject separately, and in that case would suggest to the Commission the state of the court of requests as the first subject for their consideration.

4. Reference has been made, as recommended by the Commission, for information as to the state of business in the Sudder Dewanny and Nizamut Adawluts at the presidency, and the result of the reference will be made known to the Commission without loss of time. In the meantime the half-yearly report, from the 1st January to the 30th June 1839, received from the Presidency of Bombay, is forwarded herewith.

I have, &c.
(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

Council Chamber, 3 August 1840.

(No. 363.)

Legis. Cons. 3 August 1840. No. 4.

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative Dep.

I AM directed to transmit to you for submission to the Right honourable the Governor of Bengal, the accompanying extract from a correspondence with the secretary to the Indian Law Commission, noted on the margin, and to request that, with the permission of his Lordship, the information therein required may be furnished for communication to the Commissioners.

Extract of Letter from Secretary of Indian Law Commissioners, of 11 July 1840.
Extract of Letter from Secretary of Indian Law Commissioners, of 3 August 1840.

I have, &c.
(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

Council Chamber, 3 August 1840.

(No. 1461.)

Judicial Cons. 28 Sept. 1840. No. 3.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Judicial Department.

Sir,

Judicial Dep.

IN compliance with the requisition conveyed by your letter (No. 363) dated the 3d ultimo, with its enclosure, I am directed by the Right honourable the Governor of Bengal to transmit, for the information of the Law Commissioners, the accompanying Report, showing the state of business in the Courts of Sudder Dewanny and Nizamut Adawlut, according to the latest returns received in this office.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William, 1 September 1840.

Judicial Consultations, 28th September 1840.

No. 4.—Enclosure.

(No. 13.)

STATEMENT showing the Number of APPEALS preferred to the Nizamut Adawlut from Sentences passed by the Commissioner of Circuit and Session Judges in Criminal Trials, and from Orders passed by the Commissioner in Cases of a miscellaneous nature, during the Month of July 1840, with the Orders passed thereon, together with an Abstract Statement of Criminal Trials decided and disposed of during the Month.

	From Sentences of Commissioner of Circuit and Sessions Judges on Criminal Trials, including the Cases called for on Inspection of the Statement.						From Orders passed by the Commissioners in Cases of a Miscellaneous nature.								
	1. Pending on the 1st July 1840.	2. Referred during the Month.	3. TOTAL.	4. Order, if Confirmed.	5. Order, if Modified or Reversed.	6. Pending at the end of the Month.	7. Pending on the 1st July 1840.	8. Referred during the Month.	9. TOTAL.	10. Order, if Confirmed.	11. Appeal Rejected as not cognizable.	12. Order, Modified or Reversed.	13. Withdrawn from File.	14. Cases referred for the Order of Government.	15. Pending at the end of the Month.
1st Division. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
1st Division. Session Judge of Shahabad	–	3	3	–	3	–	–	1	1	–	–	–	–	–	1
1st Division. Ditto – – Sarun	1	–	1	–	–	1	4	–	4	–	–	1	1	–	2
1st Division. Ditto – – Behar	–	–	–	–	–	–	2	1	3	–	–	–	1	–	2
1st Division. Ditto – – Patna	–	1	1	–	–	–	5	5	10	2	–	–	1	–	7
2nd Division. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
2nd Division. Session Judge of Tirhoot	–	–	–	–	–	–	–	2	2	–	–	–	–	–	2
2nd Division. Ditto – – Bhaugulpore	1	1	2	–	–	2	5	2	7	1	–	1	–	–	5
2nd Division. Ditto – – Purneah	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
3rd Division. Commissioner of Circuit	–	–	–	–	–	–	–	1	1	–	–	–	–	–	1
3rd Division. Session Judge of Dinagepore	1	2	3	–	–	3	2	1	3	1	–	–	–	–	2
3rd Division. Ditto – – Rajeshye	1	2	3	–	–	3	3	1	4	1	–	–	2	–	1
3rd Division. Ditto – – Rungpore	1	–	1	1	–	–	2	–	2	1	–	–	–	–	1
4th Division. Commissioner of Circuit	–	–	–	–	–	–	–	1	1	–	–	–	–	–	1
4th Division. Session Judge of Moorshedabad	1	–	1	–	–	1	1	1	2	1	–	–	–	–	1
4th Division. Ditto – – Beerbhoom	–	–	–	–	–	–	3	–	3	1	–	–	1	–	1
4th Division. Ditto – – Nuddea	–	–	–	–	–	–	2	3	5	–	–	1	1	–	3
4th Division. Ditto – – Burdwan	1	1	2	–	–	2	2	3	5	2	–	–	–	–	3
5th Division. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
5th Division. Session Judge of Mymensing	1	–	1	–	–	1	4	5	9	5	–	1	1	–	2
5th Division. Ditto – – Dacca	3	–	3	–	–	3	5	2	7	2	–	1	2	–	2
5th Division. Ditto – – Backergunge	1	–	1	–	–	1	3	8	11	4	–	1	3	–	3
5th Division. Ditto – – Sylhet	–	–	–	–	–	–	2	–	2	–	–	–	–	–	2
6th Div. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
6th Div. Session Judge of Chittagong	2	–	2	1	–	2	2	2	4	–	–	1	1	–	–
6th Div. Ditto – – Tipperah	1	1	2	1	–	1	2	1	3	1	–	–	–	–	2
7th Division.—Commissioner of Circuit	–	–	–	–	–	–	–	1	1	–	–	–	–	–	1
16th Division. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
16th Division. Session Judge of Jessore	1	1	2	–	–	2	1	3	4	–	–	–	1	–	3
16th Division. Ditto – – 24 Pergunnahs	1	–	1	–	–	1	–	6	6	1	–	–	2	–	3
16th Division. Ditto – – Hooghly	–	1	1	–	–	1	–	–	–	–	–	–	–	–	–
19th Div. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
19th Div. Session Judge of Midnapore	3	2	5	–	–	5	4	2	6	–	–	–	4	–	2
19th Div. Ditto – – Cuttack	–	1	1	–	1	–	–	–	–	–	–	–	–	–	–
Governor-general's Agent at Hazareebaugh	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Commissioner of Arracan	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Commissioner of Tenasserim Provinces	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Political Agent of Cheerapoonjee	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
TOTAL	20	16	36	3	4	29	52	52	104	23	–	7	21	–	53

ABSTRACT STATEMENT of CRIMINAL TRIALS decided and disposed of by the Court of Nizamut Adawlut for the Lower Provinces, in the Month of July 1840, and of the Number depending at the end of that Month.

	Trials referred under the Regulations.	Trials called for.	TOTAL.
Depending on the 1st July 1840	77	20	97
Received in the month of July 1840	42	16	58
TOTAL	119	36	155
Decided in the month of July 1840	35	7	42
Depending on the 1st August 1840	84	29	113

Of the 42 trials decided during the month—

Mr. Rattray recorded his opinion on		9
Mr. Tucker	ditto	8
Mr. Smyth	ditto	24
Mr. Lee Warner	ditto	12
Mr. Dick	ditto	12
Mr. Reid	ditto	–

(signed) *J. Hawkins*, Register.

(B.) No. II.
Questions which occupy the immediate Attention of the Commissioners.

ABSTRACT STATEMENT of Causes disposed of by the Presidency Court of Sudder Dewanny Adawlut in the Month of July 1840, and of the Number depending at the end of that Month.

	Suits instituted prior to the 1st January 1838.						Instituted subsequently to the 1st January 1838.						Received from the late Calcutta, Dacca, Moorshedabad, and Patna Courts of Appeal.						REMARKS.
	Regular Appeal.			Special Appeal.			Regular Appeal.			Special Appeal.			Regular Appeal.			Special Appeal.			
	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	
By Messrs. R. H. Rattray, D. C. Smyth, F. Lee Warner, and A. Dick	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. D. C. Smyth, E. Lee Warner, and C. Tucker	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. C. Tucker, R. H. Rattray, and E. Lee Warner	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. C. Tucker, E. Lee Warner, and A. Dick	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. T. P. B. Biscoe, E. Lee Warner, and C. Tucker	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. T. P. B. Biscoe, A. Dick, and E. Lee Warner	1	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. T. P. B. Biscoe, E. Lee Warner, and D. C. Smyth	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. E. Lee Warner and R. H. Rattray	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. E. Lee Warner and J. R. Hutchinson	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. A. Dick and E. Lee Warner	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. T. P. B. Biscoe and E. Lee Warner	1	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Messrs. J. F. M. Reid and D. C. Smyth	–	–	–	–	–	–	11	–	–	3	–	–	–	–	–	–	–	–	
By Mr. R. H. Rattray	1	–	–	1	–	–	1	–	–	–	–	–	–	–	–	–	–	–	
By Mr. D. C. Smyth	6	–	–	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Mr. A. Dick	4	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	
By Mr. E. Lee Warner	4	–	–	4	–	–	1	–	–	–	–	–	–	–	–	–	–	–	
By Mr. T. P. B. Biscoe	–	–	–	–	–	–	–	–	–	3	–	–	–	–	–	–	–	–	
By Mr. J. F. M. Reid	–	1	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	
TOTAL	24	1	–	18	–	–	13	2	–	6	–	–	–	–	–	–	–	–	
TOTAL Amount or Value – *Sicca Rs.*	5,28,034	4,757	–	24,546	–	–	31,232	1,02,452	–	12,226	–	–	–	–	–	–	–	–	

	Regular Appeal.	Special Appeal.	Decided on Trial.		Dismissed on Default.		Adjusted or Withdrawn.		Pending on the last Day of the Month.		Ready for Hearing.
			Regular.	Special.	Regular.	Special.	Regular.	Special.	Regular.	Special.	
Suits instituted prior to the 1st January 1838, and pending on the 1st July 1840 - - -	192	69	24	18	1	–	–	–	167	51	–
Suits instituted subsequently to the 1st January 1838, pending on the above date - - -	284	160	13	6	2	–	–	–	269	154	–
Received from the late Calcutta, Dacca, Moorshedabad, and Patna Courts of Appeal - - -	–	1	–	–	–	–	–	–	–	1	–
Total pending on the 1st July 1840	476	230	–	–	–	–	–	–	436	206	–
Received during the month of July 1840 - - - - -	29	15	–	–	–	–	–	–	29	15	–
	505	245	37	24	3	–	–	–	465	221	–
	750		64						686		225

STATEMENT showing in how many MISCELLANEOUS CASES Orders passed by the Presidency Court of Sudder Dewanny Adawlut during the month of July 1840.

	Proceedings held and Orders passed in Miscellaneous Cases.	Miscellaneous Petitions.	PETITIONS OF SPECIAL APPEALS.				GRAND TOTAL.
			Admitted after Hearing.	Rejected after Hearing.	Struck off for Default, and other Irregularities.	Total Disposed of.	
By Mr. R. H. Rattray -	- - -	3	3	2	- -	5	8
By Mr. D. C. Smith -	13	91	3	8	- -	11	115
By Mr. C. Tucker - -	3	3	2	- -	- -	2	8
By Mr. A. Dick - -	13	7	1	- -	- -	1	21
By Mr. E. Lee Warner -	23	5	2	- -	1	3	31
By Mr. T. P. B. Biscoe -	- - -	54	11	6	- -	17	71
By Mr. J. F. M. Reid -	414	100	- -	- -	- -	- -	514
TOTAL - - -	466	263	22	16	1	39	768

(signed) *J. Hawkins*, Register.

(No. 141.)

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *J. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Judicial Cons. 28 Sept. 1840. No. 5.

Sir,

WITH reference to the 4th para. of my letter (No. 339) of the 3d ultimo, I am directed by the Governor-general in Council to transmit to you, for the information of the Indian Law Commissioners, copy of a Report showing the state of business in the Courts of Sudder Dewanny and Nizamut Adawlut at the presidency, according to the latest returns received.

Judicial Dep.

I have, &c.

Council Chamber, 28 September 1840.

(signed) *F. J. Halliday*, Junior Secretary to the Government of India.

(B.) No. III.
Relative to Affrays concerning Indigo and Pounding Cattle.

—(B.) No. III.—

RELATIVE TO AFFRAYS CONCERNING INDIGO AND POUNDING CATTLE.

(No. 2.)

Legis. Cons. 28 Dec. 1835. No. 29.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *F. Millett*, Esq. Secretary to the Indian Law Commission.

Sir,

Legislative.

I AM directed by the Hon. the Governor-general of India in Council to acknowledge the receipt of your letter, dated the 13th ult., and the Minutes of the President and members of the Law Commission which accompanied it, on the several points referred for their consideration in my communication of the 25th of May last.

2. In reply, I am desired to communicate to you for the information of the Commissioners the following observations.

3. The Commissioners seem to be agreed as to the propriety of rescinding such part of Clause 2, Section 15, Regulation V. 1831, as prohibits sudder ameens from trying suits in which Europeans and Americans are parties; and similarly of Clause 1, Section 18, of the same Regulation, regarding principal sudder ameens. The Act of 3 & 4 William 4, chapter 85, section 87, removing the various disabilities therein described, has virtually cancelled the regulation last cited. But it is in the contemplation of the Governor-general in Council to enact a declaratory law on this point, as well as to provide that all Europeans or Americans who may be appointed to any office under Government, shall be liable, as regards their conduct while in office, to the same rules as are applicable to servants of the Government who are natives of India. It appears to the Governor-general in Council to be expedient and proper that Europeans should be made subject to the jurisdiction of the sudder ameen's court in like manner as natives are now subject. The fact of their being thereby deprived of an appeal to the Supreme Court, which has been noticed and discussed in the Minutes of the Commissioners, would not appear to constitute a sufficient objection to the measure, and a provision will be introduced for giving effect to it accordingly.

4. With regard to the second point, viz. "the propriety of rescinding the rule which gives to a person advancing money for the cultivation of indigo plant, a lien on the crop," the Governor-general in Council is disposed to concur in the opinion expressed by the Honourable Mr. Macaulay, to the effect, "that the question is one in which the ryot appears to be very little interested," inasmuch as it is of little consequence to him whether the indigo planter or the zemindar be the person who has a right of distraint, but if both have that right he is liable to double oppression and anxiety.

5. In my former communication it was observed, "that if this law was just and proper in regard to indigo concerns, it ought consistently to be extended to every sort of advance;" but the Governor-general in Council has seen reason to modify this opinion. There is undoubtedly a peculiarity in the cultivation of indigo rendering prompt measures necessary for the security of that species of property, which are not equally so for all other products. Under these circumstances, as the ryot would be little if at all benefited by the repeal of the privilege in question, as extensive injury might be entailed on the indigo planters if it were withdrawn without the substitution of some equivalent provision, and as the Governor-general in Council proposes to take into his consideration the means of saving the zemindar from suffering any pecuniary loss from the operation

(B.) No. III.
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ration of that rule, he is not prepared to determine that it shall be altogether rescinded.

6. The Law Commissioners are unanimous as to the inexpediency of enacting a law for the more effectual suppression of affrays concerning indigo. The Governor-general in Council doubts not that this important subject in all its bearings will receive from the Law Commissioners that attentive deliberation which it so peculiarly demands.

7. As to the question of a peculiar law for the registration of indigo contracts, the Governor-general in Council is disposed to think, that it would be inexpedient, if not impracticable, (at least for any good purpose,) to compel the registration of all such contracts. The subject may, in the opinion of the Governor-general in Council, be safely left over till the Commission shall arrive at that stage of their labours when the consideration of a general system of registry can conveniently be taken up.

8. The Governor-general in Council is further of opinion, and chiefly for the reasons so ably stated by the Honourable Mr. Macaulay, that it would be inexpedient to fix any legal limit to the duration of indigo contracts; and as regards this branch of the subject, he is disposed to think that the indigo planter and the ryot should be at liberty to enter into such terms as they may consider best for their own advantage respectively.

9. I am desired to return to you the original papers noted in the margin, connected with the question of a law for the pounding of cattle, in order that they may be referred to when that question comes under the consideration of the Law Commission. They can be sent back to my office when they are no longer required by the Commission.

Extract from the General Department, of 9 Dec. 1839, covering letter from the Board of Customs, Salt and Opium, of the 19th Nov. 1833, with Enclosures.
Letter from the Register of the Sudder Dewanny Adawlut, N. W. P. of 16 May 1834, with 36 Enclosures.
Letter from Register of the Sudder Dewanny Adawlut, N. W. P. of 6 June 1834, with Enclosures.
Letter from Register of the Sudder Dewanny Adawlut, L. P. of 29 August 1834, with Enclosures.
Letter from Register of the Sudder Dewanny Adawlut, of 7 Nov. 1834.
Letter to the Register of the Nizamut Adawlut, at the Presidency, dated 16 Dec. 1833.

I have &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

Council Chamber,
28 December 1835.

(No. 49.)

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to *W. H. Macnaghten*, Esq. Secretary to the Government of India in the Legislative Department.

Legis. Cons. 17 August 1840. No. 10.

Sir,

I am directed by the Indian Law Commissioners to request that you will submit to the consideration of the Right honourable the Governor-general of India in Council the following observations on the subjects noticed in the latter part of your letter to the address of Mr. Millett, dated the 28th of December 1835.

2. In the sixth paragraph of that letter, after noticing the unanimous opinion of the Law Commissioners, that it would be inexpedient to enact any law specifically for the more effectual suppression of affrays concerning indigo, you conveyed an intimation of the expectation of the Government that this important subject in all its bearings would receive from the Commission that attentive consideration which it deserves. I am now directed to report that this subject has again been taken up by the Commissioners during the preparation of the penal code lately submitted to Government, and has been maturely considered. The Law Commissioners are of opinion that everything can be effected by penal laws, towards the suppression of affrays of the nature in question, would be effected by the enactment of that code; in which, besides the provision of suitable penalties for committing extortion, trespassing, rioting, inflicting bodily hurt, or committing culpable homicide, as the case may be, a peculiar provision has been made, with a view to check an unnecessary resort to violent measures, in cases of a disputed right of possession, even on the part of a person defending a rightful claim. *sic. orig.*

3. The chief peculiarity in these affrays is this, that they are supposed to be originated by parties who do not appear in them openly. The penal code would make such parties liable to the same punishment with those who are openly engaged in committing the offence. The detection of such parties, and their conviction,

(B.) No. III.
Relative to Affrays concerning Indigo and Pounding Cattle.

conviction, must depend greatly on the vigilance of the police, and the existence of reasonable rules of evidence. The vigilance of the police is of course matter for the sole consideration of the executive government, but the Law Commissioners hope shortly to submit for consideration a project of a law of evidence, such as they consider to be best adapted for the ascertainment of truth.

4. Whatever further provisions of law may be necessary, in order to the more effectual prevention of affrays of this sort, will be considered in connexion with the code of criminal procedure.

5. With respect to the question of enacting a law for the pounding of cattle, the Law Commissioners observe, that a part of this question has been disposed of by them, by the provisions in the penal code on the subject of trespass, by which the intentional driving of cattle on the property of another party would be a punishable offence. The rest of this question, together with the entire question of enacting a law to provide for the registration of deeds, including indigo contracts, must, as observed by the Honourable the late Governor-general of India in Council, lie over until these questions shall respectively arise in due course, during the regular progress of the labours of the Law Commission.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Indian Law Commission.

Indian Law Commissioners' Office,
11 July 1837.

(No. 2002.)

Legis. Cons. 17 August 1840. No. 11.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Judicial Department.

Sir,

Judicial Dep.

I AM directed by the Honourable the Deputy Governor of Bengal to request that you will submit, for the consideration of the Supreme Government, the accompanying extract from the Report of the Superintendent of Police, Lower Provinces, for the last six months of 1838, relative to "poundage of cattle, &c. for trespass," in order, if it be thought advisable, to the passing of some legislative enactment on the subject.

Paras. 1051 to 1069.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
12 December 1839.

Legis. Cons. 17 August 1840. No. 12.

EXTRACT from the Report of the Superintendent of Police, Lower Provinces, for the second Six Months of 1838.

Fines on Stray Cattle.

Para. 1051. IN all agricultural countries it has been found necessary by the cultivators of the soil to protect their crops from the trespass of cattle. In England, which is generally an enclosed country, a common pound is attached to every lordship or village, or ought to be so by law; the oversight whereof is to be by the constable or steward of the leet. The process of distress is entrusted to the tenant in possession of the field, or the owner of the crop in which the trespassing cattle is found damage faisant. It is described as the taking of a personal chattel out of the possession of the wrong-doer in the custody of the person who is injured, to procure a satisfaction for the wrong committed. The process is of two kinds, for cattle for trespassing and doing damage, or for non-payment of rent. In India, where British legislation is still in its infancy, laws sufficiently stringent have been enacted to enable the landholders and others to recover by distress the rents due to them, the revenue of government depending in a measure on the efficiency of the law of distraint; but hitherto no law has been enacted to protect the agricultural interests from the damage to which they are rendered liable by the trespass of cattle into cultivated fields generally unprotected by fences.

1052. The people, however, were not disposed to remain quiescent observers of the devastations committed on their crops by stray cattle; numberless affrays which have disgraced our police statement from the commencement of our government,

government, may be traced to this feeling: they took the remedy into their own hands, by driving away and impounding the trespassing cattle, and laying fines on the owners whenever they possessed the power, and in so doing they merely assumed the inherent right which all possess, to protect themselves and property when the government of the country cannot or will not do it for them; when they met with resistance the distraint was converted into a bloody affray, and the magistrates soon found it necessary in order to keep the peace to interfere; hence the universal adoption of a plan in every district in Bengal, Behar, and Orissa, whereby the darogahs of tannahs have been authorized to levy fines on the owners of trespassing cattle, on proof of damage having been done by them.

1053. The system which has obtained is as follows:

Whenever a person finds stray cattle grazing in his fields, he drives them to the tannah. On their arrival the darogah takes evidence as to the amount and value of the damage, and if proved he levies a fine, and the cattle are not restored to their owner until the fine be paid. The fines which are levied, after deducting the expenses of the pounding, are sent to the magistrate, and carried to the account of Government. It will be observed that the system is entirely penal, and the persons who have suffered damage can only obtain compensation for the injury which their crops have suffered by a long, tiresome, and expensive regular suit in the Zillah Dewanny Adawlut.

1054. The amount of fines in different districts differ; the average rate is noted in the margin.

Buffaloes and Horses	8 annas.
Calves and Colts	4 —
Sheep and Goats	2 —

1055. The checks to prevent extortion on the part of the darogahs are pronounced to be generally inefficient by the local authorities. The usual system, when a fine has been imposed, is for the darogah to send a report of the case to the magistrate, and at the end of the month an account current, which is checked by an examination of the registers kept by the sheristadar, the nazir, and the treasurer, compiled from the darogah's report; but all the magistrates unite in considering the checks on the Mofussil authorities to be imperfect, if not nugatory. Mr. Battye, the joint magistrate at Mongyr, states, that no checks exist to restrain the darogahs. "The system is only sanctioned by the common consent of the people, and he avows himself to be quite at a loss to propose a remedy to prevent extortion." Mr. Plowden, the acting magistrate of Sylhet, writes, that "checks upon extortion depend upon the people preferring complaints when they have cause; they must be imperfect at the best. If a darogah is dishonest enough to pocket the fines, and make no report, I am not aware in what manner he can be controlled."

1056. I therefore am of opinion that the checks which have been devised to restrain the cupidity of the darogahs of the police are inefficient; but that the checks at the Sudder stations on the magistrates' omlah are equal to the advantages expected from them.

1057. I am afraid we cannot expect much assistance from the people to prevent the embezzlement of the fines. Their object is obtained when the person whose cattle damaged their corn has been fined, and they care not what becomes of the amount levied, as they receive no share of it. In proof of this it is stated by Mr. Metcalfe, the acting magistrate of Backergunge, that no darogah has ever been convicted of extortion or embezzlement in this particular part of his duty.

1058. Opinions differ as to the advantages of the system at present in force. All the authorities appear to consider some protection from carelessness or enmity of cattle owners to be due to the agricultural interests; common sense indeed shows the necessity of it, and experience has proved that whether laws are enacted or not, the people will have protection, legally if possible, but if not legally, by other means.

1059. There can be no doubt of the illegality of the present system, the illegality of which, I must observe, consists, not in the driving and pounding of the cattle found damage faisant, in the fields, but in the tribunal by which the fines are imposed.

1060. By Clause 1, Section 12, Regulation XX. of 1817, the darogahs are prohibited, under pain of dismission from office, from taking cognizance of slight trespass, and by clause 3 of the said section and Regulation the darogahs are prohibited from passing sentence upon any complaint, or from imposing any fine.

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1061. It will thus be found, that the magistrates have for a series of years called upon the darogahs to perform acts, which by law they could not perform except under penalty of dismission from office.

1062. The orders of the Government and of the Nizamut Adawlut on this subject are conflicting.

1063. The Governor of Bengal, on receiving a full exposition of the system in force, instructed the commissioner of Bauleah to carry the produce of the fund to the Government account, and Mr. Secretary Mangles added, "but he (the Governor of Bengal) is of opinion that the remainder, and any further sums accruing on the same account, should be carried to the public credit until the subject shall have received the final consideration of Government." It is evident that the Regulation prohibiting this practice was not taken into consideration, or the honourable the Governor would never have thus sanctioned the collection of an illegal cess by an unlawful tribunal, till the final decision of Government should be passed on a point already adjudicated, and requiring no decision.

See Mr. Secretary Mangles' Letter, No. 555, of 10 May 1836, to the Commissioner of Circuit at Bauleah.

1064. The Nizamut Adawlut prohibited the system in force, in one zillah, by an order issued to the sessions judge of Tirhoot, under date the 21st September 1838 (No. 2,791), but took no notice of the general adoption of the system in all the rest of the districts.

1065. As it is impossible to prevent the agricultural classes from pounding cattle found straying and damaging their crops, it will be necessary to concoct a plan whereby they can be protected from damage, and the other classes from extortion and undue distraint of their cattle.

1066. The plan which appears to me to be the most feasible, is as follows:

1st. The proprietors and others in possession of land to be authorized to seize all stray cattle found on their lands grazing, or doing any other kind of damage, and to drive them to the nearest pound.

2d. Every darogah of a thannah, every ameen nominated under Act I. of 1839, or by the judge of a district, to distrain property, and every pergunnah carjee to keep a pound for the reception of stray cattle brought to the pound, who, in addition to being repaid the expenses of feeding, &c. the cattle, shall receive half the fines to be levied on the owners of the said cattle.

3d. They shall not release any cattle without orders from the Dewanny Adawlut or moonsiffs, under a heavy penalty.

4th. A table of the fines authorized to be levied to be prepared for their guidance.

1067. Summary suits on plain paper to be brought against the owners, if known, of impounded cattle by the impounders before the moonsiffs, who, after due inquiry, shall adjudge the payment of half of the specified fines to the pound-keepers, and the other half to Government, and shall award damages for the injury committed by the impounded cattle to the injured party. Where no owner is to be found, the cattle, as hitherto, to be sent to the magistrate of the district to be disposed of in the usual manner.

1068. It will not be expected in this place that all the precautions necessary to make the plan available should be set forth. It is enough if the explanation be found sufficiently explicit to enable the Legislature to prepare an Act for the purpose.

Receipts - - - -	84,287	5	9
Expenditure - -	35,566	10	–
Balance - -	48,720	11	9

1069. The accounts of the fines deposited in the Mofussil treasuries have been very imperfectly kept up. They have in some districts been mixed up with other items of collections. I have annexed in the margin the receipts, expenditure, and balance for the 32 districts, from the commencement of 1836 to the end of 1838. An abstract account current of fines levied on stray cattle will be found in the Appendix, marked (I.)

(A true extract.)

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Legis. Cons. 17 August 1840. No. 13.

Minute by the Honourable *A. Amos*, Esq. dated 21st July 1840.

Distraining Cattle.

The papers have been detained for several months in consequence of matters more immediately urgent intervening.

It was thought in Council that the grievance was very general and very great, and that a remedy should be attempted, though we did not see very clearly what practical remedy could be conveniently adopted.

On a subject so peculiarly relating to the occurrences and the administration of justice in the Mofussil, I can do no more than put the matter in train. Should it be thought advisable to pass an Act upon this subject, the draft can be modified to express the principle that may be approved of in Council, and the minuter details may be best prepared after receipt of suggestions consequent on the published draft.

(signed) *A. Amos.*

AN ACT for authorizing and regulating the Distraining of Animals unlawfully doing Damage to Property.

Legis. Cons. 17 August 1840. No. 14.

Enclosure.

1. It is hereby enacted, that it shall be lawful for any person in the occupation of land, upon which animals of any description shall be unlawfully doing damage, to distrain such animals, or any of them.

Sec. 12, Reg. XVII. of 1799.

2. And it is hereby enacted, that every person making such distress as aforesaid may, in the first instance, keep the animals distrained upon the premises in charge of any person he may think proper, or drive or convey them with due care to a proper place, as near as possible to the place where they were distrained, within the limits of the same pergunnah.

Sec. 14, Reg. XVII. of 1793.

3. And it is hereby enacted, that distrainers shall not work any animals distrained; they shall, in the first instance, provide them with necessary food.

4. And it is hereby enacted, that it shall be the duty of every person so distraining as aforesaid, after securing the distress, forthwith to make a complaint, containing statement of the circumstances of the distress, to a moonsiff within the same pergunnah.

5. And it is hereby enacted, that any such moonsiff receiving such complaint shall forthwith use his best endeavours to summon before himself the owner of the animals distrained, and shall give charge of the animals to a darogah; and such moonsiff may at his discretion order any of the animals to be sold, in order to defray the expenses of sustenance, before a decision can be pronounced.

6. And it is hereby enacted, that after taking due means to summon the parties interested, the moonsiff shall make a summary decision upon the complaint; and if the animals distrained shall be proved to have unlawfully committed damage to the property of the complainant, the moonsiff shall ascertain the amount of such damage, and of all cost reasonably incurred in making the distress and preferring the complaint, and of all charges incident to the distress, and shall make an order for the payment thereof, and shall detain the cattle distrained until such time as the same is paid; and if the same be not paid within a reasonable time, he shall order so many of the cattle to be sold as shall be necessary for compensating the complainant and defraying all charges incident to the distress.

7. And it is hereby enacted, that any such moonsiff as aforesaid may award damages and costs to the owner of the animals distrained, in case of the distress being illegal, of the animals distrained not being duly fed or taken care of by the complainant, or in case of any unnecessary delay of the complainant in preferring his complaint.

(B.) No. III.
Relative to Affrays concerning Indigo and Pounding Cattle.

8. And it is hereby enacted, that any person unlawfully taking away any animals that have been distrained as aforesaid shall, on conviction before any magistrate, be liable to be imprisoned with hard labour for any term not exceeding three months, and the animals rescued shall, by order of any magistrate, be restored to the persons legally authorized to take charge of the same.

9. And it is hereby enacted, that all proceedings respecting such distresses as aforesaid shall be final, except in cases in which the right to the occupancy of property is in dispute, in which case an appeal will lie from the decision of the moonsiff, as provided by the Regulations; provided that, in any case of any such appeal, a deposit be made with the moonsiff by the appellant, if he be the person whose beasts are distrained, of a sum of money equal to that which the moonsiff shall have advised him to pay; provided that, in order to defray such deposit, the moonsiff shall, if requested by the appellant, sell so many of the animals distrained as shall be necessary to raise the same.

10. And it is hereby enacted, that any darogah or other officer receiving any money from any distrainer, or from any person whose property is distrained, under colour of liability, or for favour in relation to such distress, shall be liable, before any magistrate, to forfeit three times of the amount, and to be imprisoned with hard labour for the space of six calendar months.

11. And it is hereby enacted, that every moonsiff shall come at least in every month, and oftener, if required, furnish a circumstantial report of all his proceedings in cases of distress authorized by this Act to of .

(No. 361.)

Legis. Cons. 17 August 1840. No. 15.

From *F. J. Halliday*, Esq. Junior Secretary to Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative Dep.

I AM directed to acknowledge the receipt of your letter (No. 2002) dated the 12th December 1839, submitting extract from the report of the superintendent of police, relative to poundage of cattle for trespass.

2. The Governor-general in Council has considerable doubts upon the propriety of legislating on this subject in the manner desired by the late superintendent of police. Assuredly the evil complained of deserves careful consideration; but, on the other hand, it seems very difficult, under the circumstances and habits of the Indian agricultural community, to frame an effective law which shall not be liable to very great abuse and perversion, and be likely, in the long run, to produce more evil than it was intended to prevent.

3. Perhaps the Right honourable the Governor of Bengal might with advantage consult the present superintendent of police, and obtain from him and from the most intelligent and experienced of his subordinates distinct opinions as to the extent of the evil and the kind of remedy required. It would be desirable to ascertain, if possible, the ideas of the people themselves upon this subject, so far as it is possible to ascertain them; and in the meantime his Lordship in Council will inquire what is the law or practice in respect to cattle trespasses in the other presidencies.

I have, &c.

(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

Council Chamber, 17 August 1840.

(No. 262.)

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India,

Legis. Cons. 17 August 1840. No. 16.

(No. 263.)

To *L. R. Reid*, Esq. Chief Secretary to the Government of Bombay.

Sir,
I AM, &c.

Honourable the Governor in Council.

Bombay.
I have, &c.

To *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, dated 17th August 1840.

Sir,
I AM directed to transmit to you, for submission to the Right honourable the Governor in Council, the accompanying copy of a correspondence, noted in the margin*, on the subject of enacting a law for the prevention of trespass of cattle, and to request that his Lordship in Council will favour the Governor-general in Council with information as to what is the law or practice in respect to cattle trespasses in the Presidency of Fort St. George.

I have, &c.
(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

— (B.) No. IV. —

ON THE SUBJECT OF TRANSPORTATION FOR LIMITED TERMS.

(B.) No. IV. On the Subject of Transportation for Limited Terms.

(No. 1435 of 1840.—Judicial Department.)

From *W. R. Morris*, Esq. Secretary to Government of Bombay, to *F. J. Halliday*, Esq. Secretary to the Government of India, in the Legislative Department.

Legis. Cons. 29 June 1840. No. 16.

Sir,
I AM directed to transmit to you the accompanying extracts para. 13th of a letter from the register of the Sudder Foujdarry Adawlut, dated the 10th of August last, No. 1396, and paras. 30th to 32d of its enclosure, from the Judicial Commissioner for the southern Mahratta country, suggesting that an Act may be passed providing that the punishment of transportation shall always be for an unlimited period; and as the proposed new criminal code admits of no limited transportation, to convey the request of the Honourable the Governor in Council, that the subject may, if the Right honourable the Governor-general of India in Council see no objection, be referred for the consideration of the Indian Law Commission.

I have, &c.
(signed) *W. R. Morris*,
Secretary to Government.

Bombay Castle,
4 June 1840.

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* Letter from Secretary Government of Bengal, of 12 December 1839, with Enclosure.
Letter to Secretary Government of Bengal, of 17 August 1840—*H. H. C.*

Legis. Cons. 29 June 1840. No. 17.

Extract Para. 13, of a Letter from the Registrar of the Sudder Adawlut, dated 18th August 1839, No. 1396.

Enclosure.

Para. 13. In respect to the remarks of Mr. Greenhill in para. 32, the judges would suggest that an Act be immediately passed, making the punishment transportation for life only.

Extract Paras. 30 to 32, from the Judicial Commissioners' Report.

The effect of the punishment of transportation for life likely to be weakened by the frequency of transportation for short periods introduced.

Para. 30. I fear I have already trespassed too much on the time and attention of the Judges, and I shall only take leave to mention one more subject that has engaged my consideration; it is one of some importance to the efficiency of our criminal judicature, and can only be remedied by the legislature, if remedy it require.

Continued. Our laws on the subject —their effect.

Para. 31. Our laws, wisely, I think, admit of no transportation but for life; and it must often have proved a satisfaction to the Judges, as it has done to myself, to have been able to commute a sentence of death to that of transportation, with the knowledge that whilst a life was spared, and the individual doomed to no desperate existence, the effect on others was little short of that occasioned by deprivation of life itself; when that fortunate effect is lost, executions must either become much more frequent, or some other equally efficacious example must be resorted to. Her Majesty's Courts are not bound by any such law; they banish natives for short periods; and it has long been a subject of wonder to me that our sentences of transportation over the "black waters" to some place as yet undefined in their imaginations, but to utter desolation they think, have not already lost the charm. It can only be accounted for by the smallness of the number so sentenced by those courts, and to the slowness with which information spreads throughout the lowest classes of this country. Now, however, that the military courts add largely to the number of return convicts, the truth will at last be discovered, and much of the effect lost; indeed, I have heard it stated that it is already so to some extent.

Continued. New Code on the subject.

32. The draft of the new code allows of no limited transportation; and I would beg to submit, for the consideration of the judges, whether the subject should not be brought to the notice of Government for immediate legislation.

(True extract.)

(signed) *W. R. Morris,*
Secretary to Government.

(No. 105.)

Legis. Cons. 29 June 1840. No. 18.

From *F. J. Halliday,* Esq. Junior Secretary to the Government of India, to *J. C. C. Sutherland,* Esq. Secretary Indian Law Commission.

Sir,

Judicial Dep.

I am directed by the Right honourable the Governor-general in Council to transmit to you, for the information and consideration of the Law Commissioners, the accompanying copies of a letter, No. 1453, dated the 4th instant, and of its enclosure, from the Secretary to the Government of Bombay, on the subject of a proposal to pass an Act providing that the punishment of transportation shall always be for an unlimited period.

I have, &c.

Council Chamber,
29 June 1840.

(signed) *F. J. Halliday,*
Junior Secretary to the Government of India.

(No. 27.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department.

Legis. Cons. 29 June 1840. No. 10.

Sir,

By direction of the Law Commissioners, I have the honour to acknowledge the receipt of your letter of the 29th June, to which is annexed copy of a letter from the Secretary to the Bombay Government, and its enclosures.

2. The Sudder Adawlut at Bombay proposed to the Government at that presidency that an Act be immediately passed, providing that the penalty of transportation shall be always for an unlimited period; and the Government, in bringing up the subject before the Supreme Government, notices that the draft criminal code submitted by the Law Commission nowhere admits of limited transportation, and proposes that the notice be referred to the Law Commission for consideration.

3. I am directed, in reply, to refer to note A, (page 2,) appended to the draft penal code, which explains the motives which influenced the Law Commissioners in abstaining from proposing limited transportation as a penalty in any instance. The Law Commissioners adhere to the opinion therein expressed. They are not quite sure from your letter whether Government wish that they should express an opinion upon the propriety of immediately legislating in the manner proposed by the Bombay Government, but they desire me to remark that they see no objection to such a proceeding.

I have, &c.

Indian Law Commissioners' Office, 14 August 1840.

(signed) *J. C. Sutherland*, Secretary.

The foregoing letter requires no order.

— (B.) No. V. —

MADRAS JUDICIAL SYSTEM.

(B.) No. V. Madras Judicial System.

(No. 28.)

From *A. Amos*, *C. H. Cameron*, *F. Millett*, *D. Eliott*, *H. Borradaile*, Esqrs. Members of the Indian Law Commission, to the Right Honourable the Earl of *Auckland*, G.C.B. Governor-general of India in Council.

No. 37.

We have now the honour to report upon the proposed changes in the Madras judicial system, to which our attention was called by Mr. Officiating Secretary Grant's letter, dated 3d June 1839, with reference to a despatch from the honourable Court of Directors to the government of Fort St. George, under date the 5th January 1838.

Legis. Cons. 5 Oct. 1840.

2. In this despatch the honourable Court of Directors made the following remarks:

"It is apparent from the correspondence here referred to, that it would be desirable to abolish the provincial courts, appeal and circuit, under your presidency as well as in Bengal; their abolition has accordingly been determined upon for the last seven years, but successive obstacles have arisen to prevent that resolution from being carried into effect. The subject being under reference to the Governor-general in Council, we trust that without further delay such reform of that portion of your judicial establishments as may be requisite will now be adopted."

3. Upon receiving this despatch, the Governor in Council communicated the remarks of the honourable Court to the Government of India, requesting

From the Chief Secretary to Government, Fort St. George, 30 Oct. 1838.

attention to the hope expressed by the Court, that no further delay would be allowed to occur in the reform of this portion of the judicial establishments of Fort St. George.

From Mr. Officiating Secretary Grant, 3 June 1839.

4. The President in Council directed the letter from the government of Fort St. George, and the extract from the honourable Court's despatch, which accompanied it, to be communicated to us with the following observations:

"When the honourable Court wrote that despatch they had not been made acquainted with the sentiments of the Law Commissioners, conveyed in their officiating secretary's letter of the 30th May 1837. Those sentiments were opposed to the introduction at that moment of such a change in the Madras judicial system as would be involved in the abolition of the provincial courts, and the appointment of Commissioners, before the Law Commission might be able to report which system of judicial administration they might recommend to be finally settled for the provinces under the Madras government. The President in Council does not not therefore propose to introduce the change that had been under contemplation, or any change of like extent, until the Law Commission may report that the objections they have noticed are, in their opinion, removed by the progress made in their labours. With reference to the sentiments of the honourable Court, as expressed in the extract above alluded to, and to the importance of the question, the President in Council recommends this subject to the early attention of the Law Commission."

From Secretary to Law Commission, 30 May 1837.

5. When the Law Commission had this subject before under consideration, the members of it were strongly inclined to the opinion, that the abolition of the provincial courts would be advisable ultimately, but they thought "it would be better on the whole to make no alteration in the existing jurisdictions while the future system was still to be formed; in other words, not to begin to make a change till it is determined what the change shall be."

6. We have since had the subject of the judicial establishments more particularly under consideration, and have deliberated upon the principles which should be observed in reforming the system of judicature, and we no longer see reason to hesitate in recommending the immediate abolition of the provincial courts under the Madras presidency.

7. This measure, according to our present views, will be necessary at all events, as a preliminary step to the introduction of the plan which we have in contemplation, and we do not perceive any ground to apprehend inconvenience or embarrassment with reference to future measures, from carrying it into effect at once, under the provisions for the performance of the present functions of those courts which we shall propose. The evil of the present system, for which a remedy is urgently required, is the delay of justice in the cases, civil and criminal, especially the latter, which fall within the jurisdiction of the provincial courts. In the proceedings of the Foujdarry Adawlut, under date the 22d September 1834, it was shown on an average of the three years 1831, 1832, 1833, that in the cases committed for trial before the courts of circuit, the interval between the apprehension and trial of the prisoners was 133 days, and that in the cases tried by those courts, and referred for the sentence of the Foujdary Adawlut, the interval between apprehension and sentence averaged 266 days. A letter from the register of the Foujdary Adawlut, dated 1st May of this year, herewith submitted, shows that the average interval between apprehension and trial in the cases referred from 1833 to 1839 was 164 days, and between apprehension and sentence 274. The average interval between apprehension and trial, during the last three years of this period, was 137 days, and so long as "the gaols are delivered only once in six months," say the judges of the Foujdary Adawlut, "it cannot be reduced much."

(In original.)

8. In the proceedings of the Sudder Adawlut, under date the 28th June 1834, it was stated, with regard to the provincial courts of appeal in the centre and northern divisions, that "the extreme delay which now occurs in the disposal of the cases before them, amounts in effect to a denial of justice. Not only are the suitors before these courts thus injured, but the delay in one division materially affects the regularity of the proceedings of the Court of Sudder Adawlut."

9. On

9. On reference to the latest returns that we have before us, showing the state of the files of these courts on the 1st of January 1839, we find that the number of causes depending in each of them was not much less than at the time to which the above remarks referred. Of 103 cases on the file of the provincial court, centre division, 57 were of more than one year's standing, 24 above two years, seven above four years, and three above six years; of 105 on the file of the provincial court, northern division, 63 were above one year, 39 above two years, 16 above four years, four above six years, and two above 10 years.

Number of Original Suits and Appeals depending 1 January 1833:	
Centre Division - -	103
Northern Division - -	105
Number of original Suits and Appeals depending 1 January 1834:	
Centre Division - -	109
Northern Division - -	123

10. It appears to be generally admitted, that this great evil cannot be effectually corrected without a change of system, involving the abolition of the provincial courts, but there is some difference of opinion as to the arrangements which should be made in consequence.

11. We are of opinion that, under existing circumstances, it is advisable to make no change but what is necessary to correct the evil complained of; and we think that a change in the machinery of the system, with some subsidiary arrangements, will be sufficient for this object. We adhere to the opinion expressed in the 16th paragraph of our secretary's letter, dated the 30th May 1837, that it is not expedient at present to abolish all reference to the Mahomedan law in the administration of criminal justice. The particular measure which was then recommended has been carried into effect by Act I. of 1840*, and we think it proper to leave the criminal law as it now stands, until Government shall come to a determination upon the penal code which has been submitted for their consideration. We are still of opinion also, that the proposed appointment of commissioners of revenue and circuit in the provinces, "who, besides discharging the duties of the supervision and control now vested in the circuit judges and collective circuit courts, should be commissioners under Regulation VII.† of 1822, and hear appeals from collectors, under Regulation IX.‡ of 1822", is not expedient. It may be advisable, in framing a general scheme, to provide specially for the supervision and control of functionaries employed in the administration of civil and criminal justice and police in the provinces; but the fittest arrangement for this purpose cannot be determined until the scheme of administration has been digested and settled in detail. With respect to the powers of supervision and control now vested in the circuit courts, it appears to us that they may for the most part be transferred to the local officers, who, on the plan we are about to propose, will be charged with the judicial functions of those courts; and we see no reason why they should not be exercised by them with at least equal effect, and probably with greater, from the control being immediate and continual, while it will still be vested in the same person or persons, of the same or nearly the same standing in the service, as at present.

12. The plan of administration, which appears to us to be best calculated to effect the immediate object, and which will be at the same time most consistent with the general scheme that we have in contemplation, is to transfer the judicial functions of the provincial courts of appeal and circuit to zillah judges, to be styled civil and sessions judges, appointing one to each district in which the administration of the revenue and police is under one and the same head; and to establish at the judge's station in each district another civil and criminal court under an assistant judge, or a principal sudder ameen, at the discretion of the Governor in Council, with the jurisdiction and powers specified in Regulations I. and II., and Regulations VII. and VIII., 1827, as the case may be, subject to certain exceptions which we shall suggest in the sequel, continuing such of the detached auxiliary courts now existing as may be found necessary.

13. We propose that the session judge, assisted by a Mahomedan law officer, shall sit from time to time, as there may be occasion, to try all cases now cognizable by the court of circuit, which shall be committed to him by the assistant

* This Act, which dispenses with a futwa from the law officers of the Foujdarry Adawlut, has operated to diminish the delay in that court very much. Before it was passed, the average delay in disposing of trials after the record was received was 27 days; it has since been diminished to 11 days.

† For inquiry into the conduct of public officers.

‡ In cases of malversation in revenue affairs.

assistant judge or principal sudder ameen at the head station, or the assistant judge or principal sudder ameen of the detached auxiliary court, if there is one, and that he shall proceed immediately in the trial and disposal of them, in the same manner as the judges of circuit now proceed, referring for the final orders of the Foujdary Adawlut all cases which are now referable to that court by the courts of circuit, and making the same reports and statements of his proceedings as are made by the courts of circuit.

14. By this arrangement the interval between the apprehension and trial of a prisoner will be at once reduced to an average probably not exceeding one-fifth of the time to which it now extends. The trial will be held under circumstances infinitely more favourable to the eliciting of truth when the facts are fresh in the recollection of the witnesses, and there has not been time for the preparation of a false defence, and of false testimony to support it, and a great relief will be afforded to prosecutors and witnesses in being saved from the serious inconvenience they are now subject to in being obliged to leave their own business, and to travel to a distance from their homes a second time to attend the court of circuit for an indefinite period.

Average of the last 3 years, 137 days; $\frac{1}{5}$th, say, 27 days.

15. We propose that the assistant judges and principal sudder ameens shall have exactly the same powers and duties in the criminal department, as the same officers have now under Regulations II. and VIII. of 1827 respectively in the districts where there are no zillah courts. In the discharge of those duties they will be assisted by the sudder ameens attached to their courts.

16. But as principal sudder ameens under the existing law are not competent to exercise criminal jurisdiction in respect of Europeans and Americans, it will be necessary to provide, where they are appointed, that the session judge shall take up any cases sent by the magistrate under Act XXXIV. of 1837, in which such persons are charged with crimes or misdemeanors, dealing with such of them as may require it in his capacity of sessions judge, without the formality of a commitment, and in respect to the others, performing the functions of an assistant judge.

17. We propose that the new assistant judges and principal sudder ameens respectively, shall have charge of the gaols at the head stations, which will be the zillah gaols, where of course all convicts under sentence by the sessions judges and Foujdary Adawlut will be confined, and generally all prisoners, civil * as well as criminal, who are now committed to the zillah gaols; and to the session instead of the circuit judges will devolve the duty of visiting them, which duty they should be required to perform at least once a month. They will be the proper officers also to visit state prisoners confined under Regulation II. of 1819.

18. The assistant judges and principal sudder ameens, whether at the head station or detached, should submit monthly to the sessions judge the same calendars and statements as are now submitted by the several criminal courts to the judge of circuit, that officer being empowered to proceed upon them, as the circuit judge is now authorized to proceed. The session judge should also have the power vested in the collective court of circuit by Section 24, Regulation X. of 1816, to enable him to call for the proceedings of any of the said subordinate criminal judges on petitions being presented to him relative to their proceedings, and to pass such orders thereupon as may be proper.

19. The session judge should be authorized to exercise the same powers as the judge on circuit with respect to cases of requisition of security under Regulations II. of 1822 and VI. of 1827, excepting cases which have been dealt with by the magistrates. In such cases his duty should be confined to receiving petitions under C. 2, Sec. 5, and C. 2, Sec. 8, Regulation VI. of 1827, and forwarding them to the Foujdary Adawlut, with which court should rest the power of passing orders. In the cases described in C. 4, Sec. 8, of the same Regulation the proceedings should also be forwarded by the session judge to the Foujdary Adawlut for orders.

20. We are not prepared at present to recommend that the session judges should be empowered to exercise any authority over the magistrates, or any interference in matters of police, except to point out to the magistrates instances of

* This will supersede Sec. 14, Reg. VII. of 1827, which prohibits collectors sending persons for confinement to the native judge, now principal sudder ameen.

of misconduct or neglect on the part of police officers which shall come to their knowledge in the course of their investigations, or shall be reported to them by the assistant judge or principal sudder ameen, and in aggravated cases to report the same to the Foujdary Adawlut, for their consideration and orders.

21. The session judge should also be at liberty to bring to the notice of the Foujdary Adawlut any neglect of the magistrate to comply with requisitions made to him as necessary to the conduct of any pending trial, or any dilatoriness or other default on the part of the officer under his authority, by which the trial may have been obstructed, by remarks in the ordinary statements rendered to that court of cases disposed of by them, or in the reports of referred trials or by special report. And it seems to be advisable that these judges should be required to make reports half-yearly or yearly of the observations that have occurred to them in the course of their proceedings upon the working of the whole system for the administration of criminal justice, including the conduct of the police so far as it has come within their view in the cases they have examined, and the conduct of the criminal courts under them, also upon the management of the gaols and the treatment and employment of the prisoners.

22. The magistrate should submit monthly to the Foujdary Adawlut the same calendars, &c. as they now submit to the judge of circuit at the period of the sessions, and they should be required to receive and submit to the Foujdary Adawlut any petitions which may be presented to them against their proceedings in any of the cases therein recorded. It would be inconvenient to transmit the original proceedings with the calendars, and it should therefore be left to the Foujdary Adawlut to call for them when required.

23. It is to be remembered that the ordinary jurisdiction of the magistrate under the presidency of Fort St. George is confined to petty offences, such as abusive language, calumny, inconsiderable assaults, and affrays, and petty thefts, not attended with any aggravating circumstances, their power of punishment being limited, with respect to the former class of offences, to imprisonment for 15 days, and a fine not exceeding 50 rupees, (except when the offender is a zemindar, or other superior landholder, in which case a fine not exceeding 200 rupees,) and with respect to the latter, to corporal punishment, not exceeding 18 rattans, now commuted to 90 lashes with a cat of nine tails, or imprisonment for a term not longer than one month *.

24. The civil jurisdiction of the provincial court being transferred to the civil judges of zillahs, they will receive and try all original suits arising within the zillahs now cognizable by those courts, and regular and summary appeals from the assistant judges, and principal sudder ameens, under the same rules of procedure as are now observed by the provincial courts, and subject to the same appeal to the Sudder Adawlut. They should also receive and try appeals in suits tried originally by assistant judges and principal sudder ameens, for an amount not exceeding 1,000 rupees, in which appeals now lie to the zillah judge.

25. The time for appealing to the civil judge from decrees of assistant judges or principal sudder ameens, we think may properly be confined to 30 days, the time now allowed for appeals to zillah judges from the decrees of registers, instead of three months, the time allowed for appeals from zillah judges to the provincial court.

26. Of the jurisdiction now belonging to the zillah judge, we would also reserve to the civil judge the cognizance of appeals from the decrees of the sudder ameens and district moonsiffs of the zillah. We think that all such appeals should be filed in his court. We believe that in most of the zillahs the judges will be able to decide all or a very large part of those appeals, and we are satisfied that they cannot be employed more advantageously. Where the criminal business is so heavy as to prevent this, the judge should still make a point of examining the proceedings of each of the sudder ameens and district moonsiffs by trying appeals from them from time to time, at no distant interval.

The

* This is the ordinary jurisdiction of the magistrate under the Presidency of Fort St. George; but, by the Post Office Act, XVII. of 1837, very much larger powers are given to magistrates generally under all the Presidencies. Where the Customs are rented, magistrates, by Regulation V. of 1821, may sentence to imprisonment with labour for three months, on a second conviction, for defrauding the Customs; and by Regulation II. of 1822, may sentence a person convicted of having counterfeit coin in possession to fine, and imprisonment for six months, if the fine is not paid.

(B.) No. V.
Madras Judicial System.

The appeals from sudder ameens and district moonsiffs which he cannot try himself, he should be authorized to refer to the assistant judge, or principal sudder ameen, at his discretion. We think that the civil jurisdiction of the sudder ameens should be confined to original suits, referred to them by the assistant judges or principal sudder ameens.

Vide Sect. 16, Reg. V. 1831, Bengal Code.

27. From the decisions of the civil judges on appeals from sudder ameens and district moonsiffs, a special appeal will lie to the Sudder Adawlut, and we would recommend that the same course be prescribed with respect to the decisions of the assistant judges and principal sudder ameens on appeals from the same functionaries.

28. We take this occasion to say generally that we are inclined to the opinion, that all special appeals involving, as they must always do, points of law or usage, should be heard and decided by the highest court.

29. We are of opinion, with reference to Sect. 8, Regulation VI. of 1816, and Sect. 13, Regulation VIII. of 1816, by which district moonsiffs and sudder ameens are liable to action in the civil courts, and to prosecution criminally, for certain misconduct in office, that the civil actions should be instituted only in the court of the civil judge, and that upon criminal prosecutions they should be tried by the sessions judge.

30. It will be necessary to provide that where a principal sudder ameen is appointed, the civil judge shall exercise jurisdiction in those cases which are specially excepted from the cognizance of principal sudder ameens by the existing law, viz. in cases in which a European officer of government is a party, or in which an appeal is made from the decision of a European officer of government.

C. 2, S. 5 & 7, 8, Reg. VII. 1827.

31. We propose that the assistant judges and principal sudder ameens, holding their courts at the head station, shall respectively have civil jurisdiction, and authority agreeably to the provisions of Regulations I. and VII. of 1827, and the other Regulations applicable to the existing courts under the same officers, subject to the provision proposed above, by which they will be precluded from receiving directly appeals from sudder ameens and district moonsiffs.

32. With respect to detached auxiliary courts, having jurisdiction over talooks remote from the station of the civil judge, we think it should be left to the discretion of the Sudder Adawlut to determine whether appeals from the district moonsiffs within the limits subject to their jurisdiction should be preferred directly to those courts or to the court of the civil judge. We are of opinion that it is only where the distance would render it very inconvenient for suitors to attend the principal court of the zillah, that a direct appeal to the subordinate court should be allowed, and that when appeals to the subordinate court from district moonsiffs are allowed, the civil judge should be authorized, at his discretion, to call up some of them to his own court, from time to time, to enable him to examine the proceedings of those inferior judges. The appeals from sudder ameens we think should always be to the civil judge.

33. Under the Regulation for principal sudder ameens, these officers are not competent to suspend or fine a district moonsiff, but are required to report any misconduct or neglect of duty on the part of district moonsiffs within their jurisdiction, which may come to their knowledge, to the zillah judge. The recommendation of persons for the office of district moonsiffs also rests with the zillah judge. We are of opinion that the district moonsiffs generally, as well within the jurisdiction of assistant judges as of principal sudder ameens, should be subject to suspension and fine only by order of the principal judge of the zillah. We are of opinion also that the recommendation of persons for the office of district moonsiff, under the proposed arrangement, should rest with the judge. We think that the appointment should be made by the judges of the Sudder Adawlut, and that a district moonsiff should not be liable to dismissal but by their order.

34. We propose that the civil judges shall be authorized to refer the execution of their own decrees and those of the Sudder Adawlut to the assistant judges and principal sudder ameens.

35. Under the present Regulations sudder ameens are not competent to execute their own decrees. We see no reason for this restriction (which does not apply to district moonsiffs), and we propose that it be removed, and that they be authorized to issue process of execution and all other process relating to causes which are or have been depending before them, directly through the regular officers

officers of the court to which they are attached, in the same manner as registers now do.

36. Although we are not insensible of the disadvantage of abolishing an office which affords a judicial training to the junior members of the civil service, we concur in the recommendation of the Madras Government, that the office of register be abolished, and where registers are now employed, and their services cannot be dispensed with without the substitution of other judicial officers, we would suggest that extra sudder ameens be appointed.

37. We take this opportunity to bring to the notice of the government of India that the office of sudder ameen of a zillah court in the Madras presidency is still virtually restricted to persons of the Hindoo and Mahomedan religions, by the unrepealed provisions of Sect. 3, Regulation VIII. of 1816, that the Hindoo law officers of the provincial courts, and the Hindoo and Mahomedan law officers of the zillah courts shall by virtue of their offices be sudder ameens of the zillah in which those courts may be stationed, notwithstanding Act No. XXIV. of 1836, which declares that no person whatever shall, by reason of place of birth, or by reason of descent, be incapable of being a principal sudder ameen, sudder ameen, or moonsiff, within the territories of Fort St. George, and provides particularly for the case of a British-born subject holding any of those offices. By Act XXIX. of 1836, the Sudder Adawlut are competent, with the sanction of government, to augment or diminish at discretion the number of sudder ameens; and we find from statements furnished to us that several of the zillah courts have now only one, while others have three. It appears to be understood that when the number of sudder ameens assigned to a zillah court exceeds the number of law officers, the judges of the Sudder Adawlut are at liberty to appoint an extra one when required, without a certificate of qualification as a law officer, and that these extra appointments are therefore open to all according to the intention of Act XXIV. of 1836, but where there are two law officers, and the number of sudder ameens is restricted to two, the law officers must be appointed. We would recommend that Sect. 3, Regulation VIII. of 1816, which is considered to improve this restriction, be repealed*; it being quite contrary to the spirit of the Act, and in our opinion very inexpedient, as shutting out from this important office persons much better qualified for its functions than the law officers who at their first appointment, however well instructed they may be in law, to the study of which they have given their exclusive attention, are generally quite devoid of experience not only of judicial duties, but of public business of any kind. Generally the best men for the office would be experienced district moonsiffs, and there would be considerable advantage in their having the hope of this promotion as a stimulus to exertion and a security for integrity; but they are excluded, and thus the Regulation has a doubly injurious effect.

38. It will of course be at the discretion of the Sudder Adawlut with the sanction of government, if the Regulation should be repealed, to appoint law officers to this situation occasionally, and it would be proper to provide that there should always be law officers enough, including those of the Sudder Adawlut, to answer the calls of the courts for exposition of the law.

39. We concur in the opinion expressed by the Madras government, that, whatever may be the arrangement determined upon to provide for the future performance of the judicial functions now exercised by the provincial courts, a special and independent arrangement should be made for the disposal of the arrears of civil cases pending in those courts. The draft of a regulation, prepared by the Sudder Adawlut for this purpose, provides that a single judge should be appointed, with authority to decide all original suits and appeals on the file of each of the courts, at the date of its promulgation, allowing an appeal of right to the Sudder Adawlut from decrees of such single judge, which may reverse or alter the decisions of lower courts, but making his decrees final when they confirm the decisions of lower courts, unless a special appeal be admitted by the Sudder Adawlut. These provisions are in accordance with the existing law, for both the provincial courts and the Sudder and Foujdary Adawlut, by which single judges, while they are empowered of their own authority to confirm, are restricted from reversing or altering any order or decision of a subordinate court; but the decision of all original suits, and regular appeals of the same

Regulation D. enclosed in letter from Chief Secretary to Government of Fort St. George, of 3 June 1836.

Regulation VIII. of 1831.

* The corresponding provision in the Bengal Code was repealed by Sect. 14, Reg. V. 1831.

same description, will in future, under the proposed arrangement, be made by a single judge, and in the latter will be final, whether the original decree be confirmed or reversed; and we think it inadvisable to make any difference with respect to the arrears; we would, therefore, omit the restriction, and allow of no appeal of right from any judgment passed on a regular appeal by the judge who is to dispose of the pending suits. If it were otherwise, the business of the Sudder Adawlut would be inconveniently increased for a time, and the final disposal of the pending suits would be protracted.

40. We think, however, that in a case of special appeal, if the judge differs from the court below, his opinion should not be decisive. In such a case we would recommend that the judge should be directed to record his opinion, and to transmit the record of the case, with his proceedings, to the Sudder Adawlut, and that a single judge of that court should be authorized to pass a final judgment, confirming* or reversing† the decree appealed against. In this recommendation we follow the principles of the existing regulations, considering the judge of the Sudder Adawlut as substituted for a senior judge of the provincial courts.

41. For the disposal of summary and miscellaneous petitions connected with the cases made over to them, the judge, we think, should be vested with the whole power of the provincial court.

42. We would further suggest that the original suits on the files of the provincial courts, in which no proceedings have been held beyond the filing of the pleadings, and exhibits should be transmitted to the district judge, to whose jurisdiction they would fall under the new arrangement, provision being made for an appeal to the Sudder Adawlut in these cases, and also in original suits already decided by the zillah courts, but still open to appeal at the time the new arrangement shall take effect.

43. We have before us returns from which it appears that, on the 1st January 1839, the files of the provincial courts stood as follows:

	ORIGINAL SUITS.	APPEALS.	TOTAL.
Centre Division - - - -	20	83	103
Northern ditto - - - -	38	67	105
Southern ditto - - - -	11	18	29
Western ditto - - - -	11	20	31

44. Assuming that the state of the files is much the same at the present time, it is to be expected that a single judge, having nothing else to do, would dispose of the arrears, including miscellaneous business, in the courts of the Northern and Centre Divisions respectively, in from 10 to 15 months, and in those of the Southern and Western Divisions in four or five months.

45. The plan which we have here suggested, of appointing a civil and session judge to each district, in which the administration of the revenue and police is under one and the same head, appears to us, under existing circumstances, to be applicable generally, except with regard to the districts of Ganjam and Vizagapatam, where, by Act XXIV. of 1839, the jurisdiction of the ordinary civil and criminal courts is very much confined‡. Up to the 1st of July there was a zillah court at Vizagapatam, and an auxiliary court, under a principal sudder ameen at Itchapore, in Ganjam; but by a resolution§ of government, dated the

* By Sect. 3, Reg. XV. of 1802, in a difference of opinion between two judges, upon an appeal case, the opinion of the senior prevails, if it goes to affirm the decree of the inferior court.

† By C. 3, Sec. 2, Reg. VIII. of 1831, when a judge sitting upon an appeal, being of opinion that the decree appealed against ought to be reversed, refers it to a second judge, if that judge concurs with him, he is competent to pass a decree accordingly.

‡ In Vizagapatam it is confined to 351 villages (out of 2,841), with a population of 1,40,536 persons, out of more than 1,000,000; in Ganjam, to 156 villages, with a population of 50,080 persons, the whole population of the district amounting to near 600,000.

§ Copies of this resolution, and of reports and proceedings connected with it, are submitted herewith.

the 12th May 1840, the zillah court was abolished, "as not absolutely necessary for administering to the judicial wants of so limited a jurisdiction as that left under the operation of the ordinary regulations in Vizagapatam District;" and an auxiliary court, under an assistant judge, was substituted for it. This new court, and the court at Itchapore, being attached to the zillah of Masulipatam, while the tracts exempted from the operation of the general rules, for the administration of civil and criminal justice in these districts, are so very much more extensive than those which remain subject thereto, the appointment of a civil and session judge to each would be superfluous. We are of opinion that one should be appointed with jurisdiction over the two districts, and that the court should be located at Chicacole, the former seat of the zillah court, on the border between the two districts about equidistant from the southern extremity* of Vizagapatam and the town of Ganjam†. Although the extremes are rather distant, yet, considering the small portion of the whole population subject to the jurisdiction of the ordinary courts in the two districts, consisting altogether of about 190,000 persons ‡, who, it may be supposed, are resident in the more remote parts on either side, and the few cases cognizable by the session judge likely to arise among them, we do not apprehend that much inconvenience will be felt on this account. We observe that the Sudder Adawlut have lately had under consideration § a proposal for the substitution of one zillah court to be re-established at Chicacole, in lieu of the two courts now at Vizagapatam and Itchapore, and have expressed their opinion that such an arrangement is objectionable, on account of the distance of the extreme parts of the two districts. We concur in this opinion with reference to the cases, civil and criminal, which fall within the jurisdiction of those courts; and, therefore, while we propose that a civil and session judge shall be located at Chicacole, we propose also that the courts of Vizagapatam and Itchapore shall be continued under principal sudder ameens. But for the convenience of the people who live nearer to Chicacole than to Vizagapatam and Itchapore respectively, we would recommend that the sessions judge at Chicacole be empowered to receive, direct from the heads of police of the neighbouring talooks in both districts, all criminal cases above the cognizance of the magistrates, and to try and determine both those falling under his own jurisdiction as session judge, and also those cognizable by the lower court, without the intervention of another officer exercising, with respect to those cases, the powers of both courts. Cases arising in the other talooks should be sent, as usual, to the principal sudder ameens, and the session judge should try such only as are committed to him by those officers. In like manner we think appeals from the district moonsiffs, whose jurisdiction is nearest to Chicacole in both districts, should be preferred to the civil judge, and the rest to the principal sudder ameens at Vizagapatam and Itchapore respectively.

46. These arrangements we suggest as what appear to us to be best adapted to the present system of administration in Ganjam and Vizagapatam, and as near as can be consistent with our general plan. But seeing how little both of territory and population is reserved from the jurisdiction of the Commissioners, we think it deserving of consideration whether it would not be expedient on the whole to exclude these districts entirely from the general scheme, and to vest in the Commissioner of each district, instead of a civil and session judge, the powers to be given to that officer in other districts, to be exercised under the rules by which the Commissioner is guided in the performance of similar judicial functions within the limits of his present jurisdiction, retaining the principal sudder ameen's court at Itchapore, and establishing one at Vizagapatam, with the same powers as will be exercised by the like courts elsewhere, subject to the supervision and appellate authority of the Commissioner, and who, we may observe, is already vested with all the powers of the present courts of circuit and appeal.

47. In

* Parkrow Pettah, 131 miles.—Table of Roads, No. 22.

† Ganjam Pettah, 132 miles.—Table of Roads, No. 22.
This town, we apprehend, is very near to the northern extremity of the country, subject to the jurisdiction of the ordinary court under Act XXIV. of 1839.

‡ The whole population of the two districts being estimated at 1,600,000.

§ Proceedings, 20 April 1840, submitted herewith.

(B.) No. V.
Madras Judicial System.

47. In offering this suggestion, we do not mean to intimate any opinion upon the fitness of the plan for the administration of civil and criminal justice which we find to be in operation throughout by far the greater part of these two districts, under the Act No. XXIV. of 1839. We apprehend the present arrangement is not intended to be permanent, but while it continues, it precludes the complete introduction of the scheme we have proposed, and it has occurred to us that it may be more convenient in the meantime to employ the agency of the Commissioner in each district, to supply the place of the provincial courts of appeal and circuit, within the narrow but long extended tract now subject to the jurisdiction of those courts, than to appoint a civil and sessions judge for the two districts, under special provisions.

48. There is only one district in which it appears to us to be necessary to provide for the trial of cases cognizable by the session judge at a detached station. This is Canara. At present the judge on circuit holds sessions for the trial of cases arising in the northern talooks of Canara, under the courts at Honore and Sirsee, at Honore: and looking at the distance of Honore, and other considerable places beyond Honore, from the head station, Mangalore, we apprehend that it is requisite to make a special provision for this case. We see no other way to provide for it at present, than by requiring the session judge to hold his court at Honore at least once in every year. In the last six months of 1838, there were eight cases involving 14 persons committed for trial before the court of circuit by the principal sudder ameens of Honore and Sirsee. Assuming that the ordinary number of cases is about the same, we may reckon that this duty, including his journey, will not occupy the session judge more than one month out of six. For five months consecutively, therefore, he will be stationed at Mangalore, and hold sessions, as there shall be occasion, for the immediate trial of all cases committed to him. It appears from the proceedings of the Sudder Adawlut, dated 22d September 1834, that they then thought that one of the two principal sudder ameen's courts in the northern Canara might be dispensed with. If it is still thought advisable to unite the jurisdiction of Sirsee with that of Honore, we would suggest that the talook of Cundapore, now subject to Honore, be separated, and placed under the court of Mangalore, to give the people the benefit of more speedy justice in the criminal department, by the session court sitting there continually during 10 months of the year.

Distance of Cundapore from Mangalore, 58 miles.

49. There is at present an assistant judge attached to the zillah court of Canara, to aid the judge in the despatch of civil business. It appears to us that it will probably be necessary to continue this officer to aid the civil judge in the disposal of appeals from the sudder ameens and district moonsiffs. We observe that the number of appeals* from sudder ameens is unusually large in this district.

Districts - - 17
United - - - 2
Districts - 19

50. The annexed paper (A.) shows the existing establishment of provincial judges, zillah judges, assistant judges, and principal sudder ameens, as it stood at the end of June last, and the establishment proposed to be substituted. To the four provincial courts were attached 12 judges; in the 19 districts subject to the provincial courts there were 12 zillah judges, 9 assistant judges, and four principal sudder ameens. We propose that, to the 19 districts, there shall be appointed 18 civil and session judges, to perform the functions, civil and criminal, of the judges of the provincial courts, and at the same time to take a large part, or the whole, where it is possible, of the civil appeal jurisdiction, now vested in the zillah and auxiliary courts, and that there shall be ordinarily an assistant judge or principal sudder ameen to each district, and one or more extraordinary to particular districts, where there are at present detached auxiliary courts, which it may be thought expedient to continue.

1 Civil and Session Judge to each 17
United - - - 1
Civil & Session Judges 18

District of Malabar:
Tellicherry - - 1
Cochin - - - 1
2

District of Canara:
Honore - - - 1
Sirsee - - - - 1
2

District of Cuddapah:
Cumbum - - - - 1

Total - - - 5

51. The number of such courts at present existing is five; but it would appear from the proceedings of the Sudder Adawlut above referred to, that two of them, one at Sirsee, in Upper Canara, and one at Cumbum, in the Cuddapah district, may be dispensed with. If this can be done without inconvenience, the number of assistant judges or principal sudder ameens required, according to our plan, will be 22, otherwise

* In the last 6 months of 1838 the number filed was 65, the number depending at the end of 1838 was 98.

otherwise 24. Besides, we have suggested that it may be necessary to continue the assistant judge now attached to the zillah court of Canara to aid the civil judge in disposing of appeals. The number required, therefore, will be 23, if the two auxiliary courts are dispensed with, or 25, if they are continued.

Assistant Judges, or Principal Sudder Ameens Ordinary, at 1 for each District	19
Add, for Auxiliary Court Extraordinary	5
	24
Deduct, if Sirsee and Cumbum are not continued	2
Total	22

52. We have proposed for the present, that the subordinate civil and criminal judge in each district shall be either an assistant judge or a principal sudder ameen, at the discretion of Government, with a view to admit of the appointment of both covenanted civil servants and persons of other classes in such proportions as may be thought fit. We look eventually to dispensing with assistant judges altogether, and placing all the subordinate civil and criminal judges upon the footing of principal sudder ameens; but we think it expedient that this change should be brought about gradually, and probably it would not be possible to effect it immediately.

53. If the number of subordinate civil and criminal courts be 24, and 12 assistant judges and 12 principal sudder ameens be entertained in the first instance, the financial result of the proposed scheme so far will be as noted below*. But there will be a further saving by discontinuing the registers of the provincial and zillah courts, and substituting sudder ameens for the latter; the total saving it appears will be 2,62,800 rupees per annum. Including Sirsee and Cumbum.

54. If the two auxiliary courts of Sirsee and Cumbum are abolished, there will still be a further reduction of 12,000 rupees per annum, on account of the salaries of the principal sudder ameens, exclusive of establishments.

55. The present charge of the native establishments of the provincial courts, we conceive, will cover the cost of additional establishments under the proposed arrangement, consequently we do not anticipate any material drawback from the above result. It appears, therefore, that the contemplated reform of the courts is recommended by considerations of economy, as well as by the promise it holds out of very greatly improved efficiency.

56. The whole saving, however, will not be immediate, as four judges will be employed at the stations of the provincial courts to dispose of the pending suits, and probably both these judges, and the other provincial judges, transferred to the civil and session judges of zillahs, will be permitted to enjoy the salaries they at present receive; but eventually, if principal sudder ameens are substituted everywhere for assistant judges, there will be again a very considerable reduction in the judicial charges.

57. We

* Old Establishment.	Salaries Per Annum.	New Establishment.	Salaries Per Annum.
12 Provincial Judges	4,62,000	18 Civil Sessions Judges	5,04,000
12 Zillah Judges	3,36,000	12 Assistant Judges	2,01,600
9 Assistant Judges	1,51,200	12 Principal Sudder Ameens	72,000
4 Principal Sudder Ameens	24,000	1 Assistant to Civil Judge, Canara	16,800
	9,73,200		
	7,94,400		7,94,400
	1,78,800		

3 Provincial Registers	25,200
11 Zillah Registers	85,200
According to Statement in Letter from Chief Secretary to Madras Government, dated 20 January 1838	110,400
Deduct, Pay of 11 Sudder Ameens	26,400
Net Remainder	84,000
Brought down	178,800
Total Saving	2,62,800

(B.) No. V.
Madras Judicial System.

57. We have suggested the principal provisions which have occurred to us as necessary to give effect to the plan we have recommended; but probably, upon a close view of details, it will be found that other subsidiary provisions are requisite to render the system complete. These will readily suggest themselves to the experienced judges of the Sudder and Foujdary Adawlut; and if our scheme should be approved in general, we would recommend that they be requested to submit a note of all the points of detail beside what we have adverted to, for which provision must be made, in order that the purpose intended may be fully accomplished.

58. Under the rules we have proposed, there will be some increase to the business of the Courts of Sudder and Foujdary Adawlut, but not more, we think, than the present number of judges will be equal to, if they fully avail themselves of the latitude allowed to them by Regulation VIII. of 1831, of exercising singly all the powers of the court, so far as to confirm orders and decisions of subordinate courts, and to pass sentences, not capital, in concurrence with the trying judge in referred trials. At present, it appears they seldom pass decisions singly. In the last six months of 1838, only one judgment was passed in the Sudder Adawlut by a single judge, and in the Foujdary Adawlut only four cases out of 46 were disposed of by judges sitting singly. The 46 cases comprehended 96 prisoners, of whom 64 were convicted and sentenced to punishment, and of these "only one was considered not convicted by the judges of circuit."

59. Upon the question of extending the powers of single judges, we propose to submit our sentiments in a separate report. But in order to enable the judges of the Sudder Adawlut, without departing from the principle of the above Regulations, to do as much as possible to "expedite the decision of civil causes," we now recommend that the provisions contained in Section 2, Regulation IX. of 1831, and Section 15, Regulation VII. of 1832, of the Bengal Code, be applied to them; which provisions we think it advisable to extend also to the civil judges, agreeably to Clause 3, Regulation V. of 1831 of the above code, and to Act No. VII. of 1831.

See Preamble to the Regulation.

60. We attach much importance, particularly to the provision which authorizes a judge, if, on hearing a petition of appeal, he is of opinion that no sufficient ground has been shown to impugn the correctness or justness of the decision or order appealed against, to confirm the same without requiring the attendance of the opposite party, and without a revision of the whole proceedings. We consider this provision well calculated to prevent unfounded appeals being preferred merely to gain time, or to harass an opponent, and by saving the time of the court it will of course expedite the administration of justice to honest suitors.

61. We would also recommend that the provision of Section 4, Regulation IX. of 1831, be applied to single judges of the Foujdary Adawlut, to facilitate and expedite the proceedings of that court.

62. By the change of system proposed, the delay which now occurs between the apprehension and trial of prisoners in cases subject to the jurisdiction of the circuit courts will be prevented. But there is also under the present system a great delay in referred cases, between the trial and passing sentence by the Foujdary Adawlut. On the average of the last six years it has extended to 109 days, viz. $81\frac{3}{6}$ between the trial and reference of the record, and $27\frac{3}{6}$ between the receipt of the record and sentence. By the operation of Act I. of 1840, which authorizes the judge of the Foujdary Adawlut to dispense with a futwa from their law officers, the average delay in that court has been diminished to 11 days. The delay before reference arises from the necessity of translating the record. The judges of the Foujdary Adawlut, in their proceedings under date the 22d of September 1834, with the view of removing this cause of delay, recommended that the judge trying referable cases should be required to transmit only the original record in the native language, with his own notes of the trial in English, and that the requisite translations should be made in their office. Under this arrangement, they said they had little doubt that the average delay in the circuit court would be reduced to a few days. The government approved of the recommendation of the judges on this point, observing that the requisite translations would no doubt be better and more expeditiously done in the office of the Foujdary Adawlut, and that in many cases it would probably be found that the translation

From 1834 to 1839.

translation of the whole record might be dispensed with, the judge reviewing the proceedings having the assistance of the notes of the judge who conducted the trial. We concur with the judges and the government in thinking that this measure will tend greatly to expedite the disposal of referred cases, and we recommend that it be adopted.

63. The translation of the record being dispensed with, the government thought that the record of every trial might be forwarded within three days from the date on which it is closed. If this be done generally, and we see no reason why it should not, and the delay in the Foujdary Adawlut does not exceed the present average of 11 days, the average interval between trial and sentence will be reduced from 109 days to 14 *.

64. A similar arrangement we would recommend to be adopted in appeals to the Sudder Adawlut. There is at present a very great delay between the admission of appeals to that court and the transmission of the record from the courts which passed the decrees appealed against. From the statement of appeals pending in the Sudder Adawlut, 1st January 1839, transmitted 5th February 1840, it appears that in three cases only out of 21 was the record transmitted within a year, and in some cases not within two years. In two cases in which appeals were admitted respectively, on the 10th and 13th October 1837, the records had not been received when the statement was made up, 5th February 1840.

65. We imagine that the delay is to be attributed chiefly to the provision by which the lower courts are required to furnish translations in English of all the proceedings, documents, and papers recorded in the case. At present, no doubt many translations are made which, if the judge trying the appeal had to select, would be dispensed with. Sometimes, probably, no translations would be required. This would be the case, for example, when the judge on hearing the petition of appeal, and reading the decree, should consider the petition to be groundless, and determine to dismiss the appeal, without summoning the defendant under the provision to that effect which we have recommended. Under the proposed arrangement, therefore, we conceive that both less work of this kind would be required, and that the work required would be done more speedily. The disposal of appeals to the Sudder Adawlut would thus be very considerably expedited.

We submit this our Report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
21 August 1840.

Foujdary Adawlut.

From *W. Douglas*, Esq. Register Foujdary Adawlut, to the Secretary to the Indian Law Commission. No. 38.

Sir,

With reference to your letter dated 5th November 1839, I am directed by the judges of the Court of Foujdary Adawlut to subjoin the annexed statement, showing in the trials referred to the Foujdary Adawlut the delay, 1st, between the apprehension of the prisoner and his trial by the court of circuit; 2dly, between his trial by the court of circuit and the receipt of that record by the Foujdary Adawlut; and, 3dly, between the receipt of that record and passing of the sentence by the Foujdary Adawlut, for every year since 1833, up to the end of the year 1839, compared with the three preceding years to which you refer. Legis. Cons. 5 Oct. 1840.

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*Allowance of course must be made for the time taken up in the transit of the record.

Number of Trials Referable actually disposed of by the Foujdary Adawlut during		In preliminary Inquiry, between Apprehension and Trial.			In the Circuit Court, between Trial and Reference of the Record.			In the Foujdary Adawlut, between the Receipt of the Record and Sentence.			Total between Trial and Sentence.		
YEAR	Number of Trials.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.
1831	123	10	457	127	2	449	98	8	296	63	41	582	291
1832	109	10	389	120	8	269	91	4	114	23	50	558	236
1833	111	12	518	152	9	245	68	15	241	49	83	603	271
Average				133			85 2/3			45			266
1834	299	12	562	205	5	472	156	5	184	37	50	862	399
1835	205	17	934	203	6	603	113	6	167	25	50	1,029	342
1836	124	16	611	130	4	546	55	7	119	24	51	817	209
1837	227	6	1,046	142	7	269	65	6	175	25	46	1,158	233
1838	125	19	799	132	6	194	37	9	145	22	46	860	192
1839	113	13	1,185	173	6	179	63	9	185	32	53	1,352	269
Average				164 1/6			81 3/6			27 3/6			274

2. In this statement, however, no distinction is made between the referable trials of which this court at once disposed and those which it was necessary for them to return to the interior, for further evidence, before they finally disposed of them. This distinction is made in the two subjoined statements.

TRIALS at once Disposed of.

Number of Trials Referable actually disposed of by Foujdary Adawlut during		In Preliminary Inquiry, between Apprehension and Trial.			In the Circuit Court, between Trial and Reference of the Record.			In the Foujdary Adawlut, between the Receipt of the Record and Sentence.			Total between Trial and Sentence.		
YEAR	Number of Trials.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.
1834	287	12	562	207	5	472	157	5	184	35	50	862	399
1835	194	17	934	206	6	603	111	6	81	21	50	1,029	340
1836	113	16	611	131	4	546	58	7	55	18	51	817	207
Average				181 1/3			108 2/3			24 2/3			215 1/3
1837	209	6	1,046	144	7	269	68	6	56	18	46	1,158	232
1838	120	19	799	133	6	194	33	9	53	17	46	860	184
1839	91	15	389	135	6	174	65	9	57	22	50	556	222
Average				137 1/3			55 1/3			19			212 2/3

TRIALS which it was found necessary to return to the Lower Courts for further Evidence, &c.

YEAR.	Number of Trials.	In Preliminary Inquiry, between Apprehension and Trial.			In the Circuit Court, between Trial and Reference of the Record.			In the Foujdary Adawlut, between the Receipt of the Record and Sentence.			Total between Trial and Sentence.		
		Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.
1834	12	50	354	165	10	297	125	54	182	105	160	624	397
1835	11	47	405	144	16	359	146	57	167	96	144	823	387
1836	11	48	214	119	6	50	26	49	119	81	134	336	228
Average				142 2/3	7		99			94			337 1/3
1837	18	18	288	121	32	104	42	31	175	81	97	407	245
1838	5	95	148	111	6	128	84	74	145	105	237	391	302
1839, exclusive of five Thug cases at Vizagapatam	13		321	141	106	143	40	26	185	79	82	511	260
Five Thug cases at Vizagapatam, in 1839	22	807	1,185	1,007		103	106	61	61	61	974	1,352	1,174
Average, excluding five Thug cases				124 1/3			55 1/3			88 1/3			269
— including ditto				460			90 2/3			108 2/3			660 1/3

3. Finally,

3. Finally, the judges direct me to subjoin a further statement explanatory of the delay in this court for the period in question.

—		1835.	1835.	1836.	1837.	1838.	1839.
Trials disposed of at once within	Days.						
	10	9	14	9	40	17	1
	20	117	106	72	120	81	45
	30	65	47	24	39	17	28
	40	24	14	4	7	1	12
	50	18	4	3	2	1	4
	60	13	4	1	1	3	1
	70	5	–	–	–	–	–
	80	1	4	–	–	–	–
	90	6	1	–	–	–	–
	100	5	–	–	–	–	–
	110	3	–	–	–	–	–
	120	4	–	–	–	–	–
	130	10	–	–	–	–	–
	140	3	–	–	–	–	–
	150	1	–	–	–	–	–
	160	2	–	–	–	–	–
	190	1	–	–	–	–	–
		287	194	113	209	120	91

—		1835.	1835.	1836.	1837.	1838.	1839.
Trials disposed of after a second reference to the interior for further evidence within	Days						
	30	–	–	–	–	–	1
	40	–	–	–	3	–	2
	50	–	–	1	2	–	4
	60	2	1	1	1	–	2
	70	1	3	3	3	–	5
	80	1	2	1	1	1	1
	90	2	1	–	2	–	1
	100	1	–	2	2	–	–
	110	–	–	1	2	3	1
	120	–	–	2	1	–	2
	130	1	1	–	–	–	2
	140	2	2	–	–	–	1
	150	–	–	–	–	1	–
	170	1	1	–	–	–	–
	180	–	–	–	1	–	–
	190	1	–	–	–	–	1
		12	11	11	18	5	22

4. I am further directed to add, that since the promulgation of Act I. 1840, dispensing with a futwa from the law officers of the Foujdary Adawlut, the following has been the delay in this court:

Number of trials - - - - - - - -	27
Shortest delay - - - - - - - -	3
Longest delay - - - - - - - -	25
Average delay - - - - - - - -	11

5. It will be observed, that the average delay in this court had been reduced from 45 to little more than 27 days, or, excluding the trials returned for further evidence, in which the delay averaged 88 days, to 19 days, before Act I. 1840 was passed. It has since been diminished to 11 days, a result, it will be hoped, satisfactory.

6. It will be observed, that in the last year in particular, the trials referred back for further evidence were much more than usually numerous.

7. In these trials the average delay in the courts of circuit has also been diminished from 85 to 81, or, excluding the trials returned for further evidence, to 55 days; but the number of referred trials in 1834 was threefold what is usual. It is expected that this delay may be still further reduced.

8. By far the greatest delay which occurs in these cases is still between the apprehension and trial of the prisoners; it has augmented from 133 to 164 days; but this arises chiefly from the result of the famine in 1833, augmenting crime to a vast extent during the years 1834 and 1835, so as then to increase the number of trials referred to this court three and twofold respectively during these two years. The delay has since decreased to its usual period of 133 and 135 days during the two last years in the trials not returned for further evidence, and so long as the gaols are delivered only once in six months, it cannot be reduced much beyond this period. But in the last year it has been augmented in the cases returned for further investigation. This, it will be perceived, has arisen chiefly from five Thug cases at Vizagapatam, which have therefore been classed separately, and is to be attributed apparently to intentional delay on the part of the Thug department in bringing Thug approvers to trial. The judges have taken due notice of this delay, and have used their utmost efforts to prevent its recurrence. The delay in the trial of these cases it will be perceived was at the least 807, and extended in one case to 1,185 days, protracting the decision in one case to 1,352 days, and thereby unusually augmenting the average delay before trial.

I have, &c.

Foujdary Adawlut, Register's Office, 1 May 1840.

(signed) *W. Douglas*, Register.

(B.) No. V.
Madras Judicial System.

(D.)

A Regulation to provide for the Trial and Decision of all Original Suits and Appeals which may be depending before the Provincial Courts of Appeal on the of 1832.

Preamble.

Whereas the provincial courts of appeal, established under the provisions of Regulation IV. of 1802, have been superseded by the enactment of Regulation of 1832, and it is necessary that provision should be made for the trial and decision of all original suits and appeals depending before those courts, the following rules have been enacted to be in force from the date of their promulgation.

Clause 2 & 3, Sect. 2, Regulation VIII. of 1831, rescinded; a single judge to be appointed to each of the four provincial courts, with authority to decide all original suits and appeals which may be depending before those courts at the promulgation of this Regulation.

2. Clauses 2d and 3d, Section 2, Regulation VIII. of 1831, are hereby rescinded.

3. First, in modification of the provisions of Clause 1, of Section 2, of Regulation VIII. of 1831, it is hereby enacted, that a single judge shall be appointed to each of the four provincial courts of appeal established under the provisions of Regulation IV. of 1802, and shall have authority to decide all original suits and appeals which may be depending before those courts on the date of the promulgation of this Regulation.

In what cases an appeal of right shall lie to the court of Sudder Adawlut.

Second. An appeal of right shall lie to the court of Sudder Adawlut from all decrees of such single judge, which may reverse or alter the decision of the lower court.

In what cases the decree of such single judge shall be deemed final. Exception.

Third. The decrees of such single judge, confirming the decision of the lower court, shall be final, unless a special appeal therefrom shall be admitted by the court of Sudder Adawlut.

No original suit or appeal to be filed in the provincial courts from and after the date of the promulgation of this Regulation.

4. From and after the date of the promulgation of this Regulation, no original suit or appeal shall be filed in the provincial courts established under the provisions of Regulation IV. of 1802.

(signed) *D. Eliott*,
Acting Register.

(A true copy.)

(signed) *J. P. Grant*,
Officiating Secretary.

(A true copy.)

(signed) *H. Chamier*,
Chief Secretary.

(No. 75 A.)

Extract from the Proceedings of the Sudder Adawlut, under date the 20th April 1840.

Read again extract from the Minutes of Consultation in the Revenue Department, under date the 6th of January 1840, No. 16, forwarding an extract from a letter from Mr. Arbuthnot, the agent to the Governor of Fort St. George, in Vizagapatam, dated 13th December 1839, and directing the court of Sudder Adawlut to submit their opinion, with reference to the statement contained therein, that no more than 352 villages in the Vizagapatam district remain attached to the zillah court, whether such a court is absolutely necessary for administering to the judicial wants of so limited a jurisdiction; and if not, to state what arrangement they would propose to substitute in lieu of it.

Also read returns, dated respectively the 24th of February and 30th March 1840, made by the provincial court in the Northern Division to the precepts of the Sudder Adawlut of the 20th of January and 2d March 1840, directing the provincial court to call upon the agents to the governor in the Ganjam and Vizagapatam districts, to submit a statement showing the aggregate amount of revenue and the extent of population of the villages belonging to the Vizagapatam

patam and Ganjam districts, attached to the zillah court of Vizagapatam, and at the same time directing the provincial court to submit a statement, showing the number of suits now on the file of the zillah court of Vizagapatam.

Also read letter from the chief secretary to Government, dated the 1st April 1840, submitting, for the consideration of the Sudder Adawlut, a representation from Tandavarogen, the sudder ameen attached to the court of the principal sudder ameen at Itchapoor, suggesting the substitution of an auxiliary court or native court at Chicacole, for the zillah court at Vizagapatam, and the principal sudder ameen's court at Itchapoor.

1. It appears from the returns of the provincial court in the Northern Division recorded above, that in the Vizagapatam district, 351 villages, with a population of 140,536 persons, and in the Ganjam district, 156 villages, with a population of 50,060 persons, total 507 villages, and 190,596 persons, are all that are left within the jurisdiction of the zillah court at Vizagapatam, and the court of Sudder Adawlut therefore are of opinion, notwithstanding the present state of the Vizagapatam file, upon which there were on the 20th of last month 322 original suits, and 103 appeals, total, 425 cases remaining undecided, that a zillah court is not "absolutely necessary for administering to the judicial wants of so limited a jurisdiction," supposing some other adequate arrangements can be made.

2. The substitution of one court to be re-established at Chicacole in lieu of the two now at Itchapoor and Vizagapatam, as proposed by the sudder ameen of the former station, would, in the opinion of the court of Sudder Adawlut, render the condition of the people worse than it was previously to the abolition of the court at Chicacole; the great distance of that station from the northern parts of Ganjam has always been strongly objected to, and was one of the reasons which induced Mr. Russell to suggest Itchapoor as a convenient station for the erection of a court for part of the Ganjam district, and in the opinion of the Sudder Adawlut it would be extremely objectionable to subject the people in the northern parts of Vizagapatam to the inconvenience of going so far as Chicacole for justice.

3. The provincial court in the Northern Division state, that they have "no hesitation in declaring their opinion that a zillah court cannot be required for administering to the judicial wants of the trifling extent of country and population comprised within the present jurisdiction of the Vizagapatam zillah court; but they submit if the Vizagapatam be too limited, that of the Governor's agent is too unwieldy, including the zemindaries of Vizianagarum and Bobely, the civilized and enlightened population of which have thus been suddenly deprived of that degree of protection of life, property, and liberty which has been hitherto enjoyed by them under our court of judicature, apparently without their having been at all consulted about the matter, and contrary, it is supposed, to the intention of Mr. Russell; and the judges therefore beg leave respectfully to suggest the expediency of replacing these two districts, or at least that at Vizianagarum, under the jurisdiction of the zillah court of Vizagapatam, which will thereby be rendered sufficiently extensive."

4. The court of Sudder Adawlut entirely agree with the judges of the provincial court, that the jurisdiction of the government agent of Vizagapatam, including the large zemindaries of Vizianagarum and Bobely, will be found too unwieldy, and it would appear to be a matter worthy the consideration of Government whether it would be expedient to adopt the suggestion of the provincial court, and replace the two large zemindaries, "or at least that of Vizianagarum," under the jurisdiction of the zillah court of Vizagapatam; but if such arrangement would not meet the views of Government, the court of Sudder Adawlut are of opinion, that the other alternative should be adopted, viz. the substitution of an assistant judge's court, upon the footing of an auxiliary court, for a zillah court, in which case, however, it will be necessary, with reference to the letter from this court addressed to Government, under date the 5th July 1838, to modify the regulations referred to in paragraphs 6 to 10 of that letter, by an Act of the Supreme Government, and this arrangement would, in the opinion of the Sudder Adawlut, be far preferable to the other alternative alluded to at the conclusion of this court's letter to Government of the 5th July 1838, of attaching the courts of Vizagapatam and Itchapoor to the zillah of Masulipatam. *See* Appendix.

5. The substitution of an auxiliary for a zillah court at Vizagapatam, would no doubt be an economical arrangement. The situation of register to the court might be forthwith abolished, and the officer holding the appointment might be

(B.) No. V.
Madras Judicial System.

transferred to the zillah of Bellary, where the services of a register are much required. But it is presumed that the European officer now in charge of the court of Vizagapatam will be allowed to retain his present allowances until otherwise provided for.

Ordered, that extract from these proceedings be forwarded to the chief secretary to Government for the purpose of being laid before the Right honourable the Governor in Council.

(True extract.)

(signed) *W. Douglas,*
Register, Judicial Department.

(No. 176/384.)

Extract from the Minutes of Consultation, under date the 12th May 1840.

Read the following extract from the proceedings of the Court of Sudder Adawlut.

(Here enter 20th April 1840.)

(No. 75 A.)

Para. 1. Under the opinion expressed by the court of Sudder Adawlut in the proceedings recorded above, that a zillah court is not absolutely necessary for administering to the judicial wants of so limited a jurisdiction as that left under the operation of the ordinary regulations in the Vizagapatam district, the Right honourable the Governor in Council resolves that the orders of Government contained in the extract from the Minutes of Consultation, dated 22d June 1838, No. 619, for the abolition of the zillah court recently transferred to Vizagapatam, and the establishment of an auxiliary court in its stead at that station, be carried into effect at the ealiest practicable period.

2. His Lordship in Council resolves to attach the new court at Vizagapatam and the court at Itchapore to the zillah of Masulipatam.

3. The appeals which may in consequence be expected to be made to the zillah court at Rajahmundry, the Right honourable the Governor in Council does not think are likely to be so numerous as to embarrass that court; should it however prove to be otherwise, his Lordship in Council will be prepared to attach one or more additional sudder ameens to it, and to apply such other remedial measures as may be found to be necessary, such, for instance, as restricting the original jurisdiction of the zillah judge to suits beyond the jurisdiction of his subordinate, which will afford him leisure for the disposal of appeals until the decision of the Government of India shall be formed upon the introduction of the contemplated reforms in the judicial system under this presidency, which have already for some time past been under its consideration, and may therefore be expected to be disposed of at no very distant period.

4. The judges of the court of Sudder and Foujdary Adawlut will be pleased to issue the necessary orders for carrying these Resolutions into effect, and will prepare and submit the usual proclamation for publication in the official Gazette for general information.

5. As Mr. Glass on the abolition of the zillah court will, until otherwise provided, hold charge of the court to be established in its stead, he will of course be entitled to draw his present allowances until nominated to an office of equal emolument.

(A true extract.)

(signed) *H. Chamier,*
Chief Secretary.

(No. 97.)

Extract from the Proceedings of the Sudder Adawlut, under date the 22d May 1840.

Read extract from the Minutes of Consultation, under date the 12th of May 1840, containing the Resolution of the Right honourable the Governor in Council, that the zillah court recently transferred to Vizagapatam be abolished, and that an auxiliary court be established in its stead at that station, and that the new court at Vizagapatam and the court at Itchapore be attached to the zillah of Masulipatam, directing also the court of Sudder and Foujdary Adawlut to issue the necessary orders for carrying these Resolutions into effect at the earliest practicable period, and directing the court to prepare and to submit the usual proclamation for publication in the official Gazette, for general information.

1. Ordered accordingly, that the accompanying draft of a proclamation notifying the abolition of the zillah court at Vizapagatam from and after the 1st of June next, and the establishment of an auxiliary court in its stead, be transmitted to the chief secretary to Government, for publication in the official Gazette, if approved of by Government.

2. Ordered further, that a copy of the Resolution of Government, recorded above, be furnished to the provincial court in the Northern Division, for their information and guidance, and with instructions to communicate a copy thereof to the magistrates of Ganjam and Vizagapatam, and to the judges at Zizagapatam and Rajahmundry, and to the principal sudder ameen at Itchapore, for their information and guidance respectively.

3. The allotment of the district moonsiffs, under the two courts at Vizagapatam and Itchapore, as sanctioned by government under date the 1st of November 1839, will not be disturbed; but, adverting to the state of the business before the court at Vizagapatam, the court of Sudder and Foujdary Adawlut are of opinion that, on the reduction of the zillah court at Vizagapatam to an auxiliary court, a corresponding reduction should be made in the present authorized establishment at Vizagapatam. The court of Sudder and Foujdary Adawlut would propose that it be fixed on a scale approximating as nearly as possible to that sanctioned by government in June 1836, for the late auxiliary court at Vizagapatam; and a list of the proposed establishment for the new court at that station is accordingly herewith submitted for the sanction of the Right honourable the Governor in Council.

Ordered, that extract from these proceedings be forwarded to the chief secretary to government, for the purpose of being laid before the Right honourable the Governor in Council.

Ordered further, that paragraphs 1 and 2 of these proceedings be forwarded for the information and guidance of the provincial court of appeal and circuit in the Northern Division.

(True extract.)

(signed) *W. Douglas*, Register.

Proclamation.

Whereas the Right honourable the Governor in Council of Fort St. George, by virtue of the powers vested in him by Regulation I. of 1821, and Section 2, Regulation I. of 1827, has deemed it expedient to abolish the zillah court heretofore held at Vizagapatam, and, in the stead thereof, to establish an auxiliary court at that station, to be attached to the zillah court at Masulipatam. All persons, therefore, are required to take notice, that from and after the 1st day of July next, the said zillah court at Vizagapatam will be abolished, and an auxiliary court will be established in lieu thereof, such parts of the Ganjam and Vizagapatam districts as may remain subject to the operation of the ordinary regulations being from that date attached to the zillah of Masulipatam.

The jurisdiction of the said auxiliary court shall extend over all places and persons heretofore subject to the jurisdiction of the zillah court of Vizagapatam.

(signed) *W. Douglas*, Register.

(B.) No. V.
Madras Judicial System.

Proposed Establishment of the Auxiliary Court at Vizagapatam.

	Rs.	As.
1 sheristadar - - -	80	–
1 nazir - - - - -	40	–
1 head translator - - -	70	–
1 assistant ditto - - -	40	–
1 head English writer - -	35	–
1 English writer - - -	20	–
1 record keeper - - -	30	–
1 assistant ditto - - -	10	–
1 tawabnierees - - -	28	–
1 assistant ditto - - -	17	8
1 gomastah - - - -	21	–
1 ditto - - - -	16	–
1 ditto - - - -	15	–
1 ditto - - - -	14	–
1 ditto - - - -	10	–
1 head moonshee - - -	28	–
1 sub - ditto - - -	21	–
1 shroff - - - -	10	8
1 mochy - - - -	5	–
Carried forward - -	511	–

	Rs.	As.
Brought forward - -	511	–
1 ructawan - - - -	3	8
1 sweeper - - - -	3	8
1 head peon - - -	10	8
4 deloyehs - at 7 *Rs. each*	28	–
14 peons - at 5¼ - -	73	8
Rupees - -	630	–
Government vakeel - -	15	–
Gaol Establishment:		
1 gaoler - - - -	20	–
1 jemedar - - - -	14	–
1 duffadar - - - -	7	–
18 peons - at 5 *Rs. each*	90	–
Rupees - -	131	–
Total *Rupees* - -	776	–
1 sudder ameen - - -	200	–
Ditto establishment -	45	–
Total, including Sudder Ameen - - -	1,021	–

(No. 220/430.—Judicial Department.)

Extract from the Minutes of Consultation, under date the 27th May 1840.

Read the following extract from the proceedings of the Sudder Adawlut:

(Here enter 22 May 1840.)

1. The Right honourable the Governor in Council approves of the proclamation submitted with the foregoing proceedings, and desires that it be published in three alternate numbers of the official Gazette for general information, the date fixed therein for the abolition of the zillah court of Vizagapatam, and the establishment of an auxiliary court in its stead, being altered from the first proximo to the first of the following month, in order that all parties concerned may have due notice of the same.

2. The Right honourable the Governor in Council approves of the directions reported in the 3d paragraph respecting the allotment of the district moonsiffs under the courts of Vizagapatam and Itchapore; and his Lordship in Council sanctions the establishment proposed to be entertained for the contemplated new court, amounting to *Rs.* (1021), one thousand and twenty-one per mensem.

(True copy.)

(signed) *W. Douglas*, Register.

(A true extract.)

(signed) *H. Chamier*, Chief Secretary.

APPENDIX.

(No. 99.)

From *W. Douglas*, Esq. Register, to the Chief Secretary to Government.

Sir,

I AM directed by the judges of the court of Sudder Adawlut to acknowledge the receipt of an extract from the Minutes of Consultation, under date the 22d ultimo (No. 619), on the subject of the measures proposed to be adopted for the better administration of the hill zemindaries and other tracts in the zillahs of Ganjam and Vizagapatam.

2. In para. 1 of the extract from the Minutes of Consultation above referred to, it is stated that it has been resolved by government, "that not only the hill zemindaries, but also all the ancient zemindaries in Ganjam and Vizagapatam, whether they be still in the possession of individuals, or have fallen into the hands of government by forfeiture or other cause, should be exempted from the operation of the ordinary laws;" and that "the Supreme Government" have, "in para. 8 of its officiating secretary's letter, dated the 16th of April last, desired that the zemindaries or other tracts which are to form the separate jurisdiction of the Commissioner, be specifically mentioned in the proposed new law for their future administration."

3. The court of Sudder Adawlut inferred, from para. 4 of the letter from the officiating secretary to the government of India, dated 16th April last, that, under the scheme proposed by the government of India, "the Commissioner would have no jurisdiction over the low lands immediately adjacent to the hill zemindaries," but merely "concurrent jurisdiction, as magistrate, over the campaign tracts immediately adjoining the hill zemindaries," when, as under the Bengal Code, the Commissioner would be invested with authority to call, upon his own responsibility, for military aid from the nearest station, in case of insurrection or other emergency; and on this point, therefore, the court of Sudder Adawlut have directed me respectfully to solicit the further orders of government with reference to the Minutes of Consultation of the 14th May 1838, requiring their opinion on the whole arrangements proposed.

4. In the 3d para. of the Minutes of Consultation, under date the 22d ult., it is stated that, as the arrangement originally contemplated by government is about to be superseded by that suggested by the Supreme Government, of uniting in one functionary the powers of Commissioner in the hill tracts within the districts of Ganjam and Vizagapatam, the Right honourable the Governor in Council is of opinion that, under this arrangement, it will not be necessary that the jurisdiction of either of the courts to be established in them should exceed the revenue charges of the remainder of those provinces, but should be made strictly to correspond with their respective reduced sizes, by which measure the Right honourable the Governor in Council contemplates that an auxiliary court, instead of a zillah court, will be found fully adequate for all the judicial wants of the district of Vizagapatam; and that the further reduction of charge, which will be effected by such substitution, will be available for meeting the extra charge which will have to be incurred in the establishment of the contemplated separate and independent commissionership for the hill tracts of the two provinces.

5. In the proposed measure of abolishing the zillah court of Chicacole difficulties have suggested themselves to the court of Sudder Adawlut; and the arrangement of establishing an auxiliary court at Vizagapatam in its stead may possibly involve a modification of the regulations to a considerable extent.

6. If the zillah court of Chicacole is abolished, it will be necessary to make provision for the trial of appeals from the decision of the assistant judge in suits not exceeding 1,000 rupees, which, under the law as it now stands, lie "to the judge of the zillah." *Vide* Cl. 3, Sec. 5, Reg. I. 1827.

7. It will be necessary also to modify the provisions of sect. 8, Regulation I. of 1827, and of sect. 5, Regulation VII. of 1827, prescribing the mode in which

(B.) No. V.
Madras Judicial System.

the assistant judge, the principal sudder ameen, and the sudder ameen of the auxiliary court are to procure expositions of the Hindoo and Mahomedan law in suits pending before them, and to make provision for the hearing of special appeals from the decisions of the sudder ameen in the native court at Itchapoor, which, by clause 2 of the last quoted enactment, are required to be preferred to the judge of the zillah.

Vide Cl. 2, Sec. 5, Reg. VII. of 1827.

8. In the event of the abolition of the zillah court of Chicacole it will be necessary also to make provision for the hearing of appeals from the decisions of European officers of government which may arise within the jurisdiction of the principal sudder ameen's court at Itchapore. Under Section 8, Regulation VII. of 1827, all such appeals lie to the zillah court only.

9. It will be necessary also to modify the provisions of Sections 9, 10, 11, 12, and 14 of Regulation VII. of 1827.

Vide Sec. 5, Reg. VIII. of 1827; Sect. 2, Act XXIV. of 1837.

10. The principal sudder ameens in their criminal capacity have no jurisdiction over Europeans and Americans, consequently special provision must be made for the trial of such persons concerned in any crime or misdemeanor which may be committed within the jurisdiction of the native court at Itchapoor, if the court of the criminal judge of the zillah be abolished.

11. It is true that these difficulties might be obviated on the abolition of the zillah of Chicacole, by attaching the districts of Ganjam, and Vizagapatam to the zillah of Masulipatam; but the great distance of Rajahmundry (the station of the zillah court of Masulipatam) from both, renders such measure, in the opinion of the court of Sudder Adawlut, highly inexpedient; add to which, the annexation of so large a tract of country to the jurisdiction at present assigned to the zillah court of Masulipatam, might so encumber the file of that court with appeals of the nature specified above as to render the appointment of an assistant judge, under Sect. 2, Regulation VII. of 1809, absolutely necessary for the due investigation and decision of the civil suits depending before the judge.

12. And under these circumstances the court of Sudder Adawlut direct me to solicit the further orders of government on the subject.

I have, &c.

Sudder Adawlut, Register's Office,
5 July 1838.

(signed) *W. Douglas*,
Register.

(A.)

DISTRICTS.	PRESENT ESTABLISHMENT.					PROPOSED ESTABLISHMENT.		
	Judges of Provincial Courts.	Zillah Judges.	Assistant Judges.	Principal Sudder Ameens.	TOTAL in each District.	Civil and Session Judges.	Assistant Judges, or Principal Sudder Ameens.	TOTAL.
Northern Division:								
Ganjam	-	-	-	1	1	1	1	3
Vizagapatam	-	1	-	-	1		1	
Rajahmundry	-	1	-	-	1	1	1	2
Masulipatam	-	-	1	-	1	1	1	2
Guntoor	-	-	1	-	1	1	1	2
Nellore	-	1	-	-	1	1	1	2
Six	3	3	2	1	Total in the Division, 9	5	6	11

DISTRICTS.	PRESENT ESTABLISHMENT.					PROPOSED ESTABLISHMENT.		
	Judges of Provincial Courts.	Zillah Judges.	Assistant Judges.	Principal Sudder Ameens.	TOTAL in each District.	Civil and Session Judges.	Assistant Judges, or Principal Sudder Ameens.	TOTAL.
Centre Divisions:								
Bellary	-	1	-	-	1	1	1	2
Cuddapah	-	1	-	1	2	1	*2	3
Chittor North Arcot	-	1	-	-	1	1	1	2
Chingleput	-	1	-	-	1	1	1	2
Cuddalore	-	-	-	-	-	1	—	—
South Arcot	-	-	1	-	1	-	1	2
Five	3	4	1	1	Total in the Division, 9	5	6	11
Northern Division:								
Cambacanna Tanjars	-	1	-	-	1	1	1	2
Trichinopoly	-	-	1	-	1	1	1	2
Mudura	-	1	-	-	1	1	1	2
Timavelly	-	-	1	-	1	1	1	2
Coimbatore	-	-	1	-	1	1	1	2
Selem	-	1	-	-	1	1	1	2
Six	3	3	3	—	Total in the Division, 9	6	6	12
Western Division:								
Malabar	-	1	2	-	3	1	3	4
Canara	-	1	1	2	4	1	†4	5
Two	3	2	3	2	Total in the Division, 10	2	7	9
Nineteen Districts	12	12	9	4	37	18	‡25	43

* Or only one assistant judge (or principal sudder ameen), if the court at Cumbum is not continued.

† Or three, if Sirsee is not continued. This includes one assistant to the civil judge of the zillah.

‡ Twenty-five (or 23 if the courts at Cumbum and Sirsee are abolished). Assistant judges or principal sudder ameens at the discretion of Government.

Legis. Cons. 5 Oct. 1840. No. 39.

On the Modification of the Madras Judicial System.

MINUTE by the Honourable *W. W. Bird*, Esq.; dated 3 October 1840.

IN a Minute dated the 24th of May 1839, I have already expressed my concurrence, for the reasons assigned by the government of Fort St. George, in the proposed modification of the Madras judicial system. That modification has been ordered by the honourable Court to be carried into effect without further delay; and it has only been postponed for the receipt of the Report from the Law Commission which has now been submitted.

That Report should be immediately forwarded to the Madras government, with a view to obtain as soon as practicable the opinion of the Right honourable the Governor in Council and of the Judges of the Sudder and Foujdaree Adawlut in regard to the various and important suggestions which it contains for the early accomplishment of the object so long desired.

Those suggestions appear to me, as far as I can at present judge, well calculated to remove the evils complained of, and to improve in a very great degree the efficiency of the judicial administration under the Madras government. There are a few points on which I entertain some doubt; viz. whether so large a number of civil and sessions judges are indispensably necessary, whether it be advisable to pursue the course recommended in regard to special appeals, whether the districts of Ganjam and Vizagapatam should or not be excluded for the present from the general scheme, and whether assistant judges might not immediately be dispensed with altogether; but on these and a few other points I shall abstain from saying more until we hear from Madras upon the subject.

(signed) *W. W. Bird.*

(No. 308.)

Legis. Cons. 5 Oct. 1840. No. 40.

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *H. Chamier*, Esq. Chief Secretary to Government of Fort St. George.

Sir,

Legislative.

WITH reference to your letter No. 489, dated 3d June 1836, I am directed by the Governor-general in Council to transmit to you, for submission to the Right honourable the Governor in Council, the accompanying copy of a Report from the Indian Law Commission, dated 2d August last, upon the proposed changes in the judicial system of the presidency of Fort St. George, and to request that his Lordship in Council will favour the Supreme Government with as little delay as practicable, as well with his own opinion as with that of the Judges of the Sudder and Foujdaree Adawlut in regard to the various and important suggestions contained in that Report, for the early accomplishment of an object so long desired. If the changes suggested by the Law Commission be approved by the authorities at Fort St. George, I am further directed to request the government of India may receive drafts of the enactments requisite to carry them into effect.

I have, &c.

Fort William,
5 October 1840.

(signed) *F. J. Halliday,*
Junior Secretary to Government of India.

— (B.) No. VI. —

On the Question of rendering Lands purchased under Fictitious Names liable to Forfeiture, including Lands of Native Officers, &c.

(B.) No. VI. Respecting Lands held under Fictitious Names.

(No. 30.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department, Fort William.

Legis. Cons. 23 Nov. 1840. No. 12.

Sir,

Mr. Secretary Macnaghten's letter, dated 5th March 1835, No. 641, referred to the Indian Law Commission the question of rendering all lands liable to forfeiture which may have been purchased in fictitious names by any parties, native officers of Government and others.

2. This reference arose from a despatch of the Honourable Court of Directors, dated 4th March 1835. In it the Honourable Court proposed that the native judicial officers should be required to report the avowed acquisitions of land by themselves and relations, and that the clandestine acquisition by such officers should be prohibited and the title derived thereby declared vitiated.

3. On receipt of the above reference, the Law Commissioners addressed to the principal judicial and revenue authorities letters, which solicited information and opinions on the following points. The prevalency of the practice, its origin, its advantages, if any, and the most suitable remedy if abolition were decided on.

4. Mr. J. P. Grant, the late officiating secretary, in his letter of 30th June 1837 to Mr. Secretary Macnaghten, in acknowledging the above, intimated that the Law Commissioners saw great inconvenience in the practice, but before suggesting any measure of abolition, had instituted the above inquiry, on consideration of the great variety of landed tenures in India.

5. In my letter of 14th September 1838, to your address, it was intimated that the returns that had been called for were not yet complete; and with reference to the letter from Government, dated 21 May, whereby certain subjects on which special legislation was proposed had been recalled, the Law Commissioners took the opportunity of asking if the Supreme Government still expected any special recommendations from them. By your reply, dated 5th November 1838, the Law Commissioners were instructed, on the completion of their inquiries, to refer the whole of their proceedings on the matter for the information of Government, a Sale Act, in which provisions might be made for such cases, being in course of preparation.

6. In compliance with this instruction, I am directed to transmit to you, for the purpose of being laid before the Governor-general in Council, a copy of the letter addressed by order of the Law Commissioners to the Sudder Courts and Boards at the three Presidencies, and the reports which have been received in answer to the queries therein contained, viz. a report from the Sudder Dewanny Adawlut at Calcutta, with an abstract of reports received from the subordinate judicial officers.

A report from the Sudder Dewanny Adawlut at Allahabad, with reports from the subordinate judicial officers and an abstract.

A report from the Sudder Adawlut at Madras, with reports from the subordinate judicial officers.

Reports from the Sudder Dewanny Adawlut at Bombay and the Boards of Revenue at Calcutta, Allahabad, and Madras, and the revenue commissioner at Bombay.

7. It will be observed that the practice of purchasing lands in fictitious names, or in the names of persons not really interested, is said to be very general in the lower provinces of the Bengal Presidency, but not common any where in the upper provinces, and in some of them almost, if not altogether unknown. Under the Madras Presidency it is stated to be very common in the southern and western divisions, particularly in the latter, comprising the districts of Malabar and Canara, and to prevail more or less in every district in the northern and centre divisions also. In the Bombay Presidency likewise it appears to be very generally prevalent.

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8. The practice appears to have obtained in most parts of the country before they fell under the British rule; but it is said to have originated in some parts, and generally, to have become more common subsequently. It is supposed that under former Governments it was induced in a great measure by fear of the rapacity and extortion of the rulers and their officers. The greater prevalence of the practice under the British Government is ascribed generally to the operation of certain provisions in our Regulations, those particularly which imposed restrictions upon the acquisition of lands by Europeans and the native functionaries in the Revenue Department, and those which subjected landholders to certain duties and personal liabilities. To evade the former, both Europeans and native functionaries adopted the expedient of purchasing land in the names of their dependants. Though the restrictions applied only to revenue officers, yet the practice appears to have become common amongst all classes of natives in the public service, mainly to prevent their superiors in office from becoming informed of the extent of their acquisitions, lest suspicions of their integrity should be excited. Capitalists, also, who desired to invest their funds in landed property, but did not like to incur the public responsibilities of landholders, fell into the same practice.

9. The practice has been followed in other cases from various motives, but mostly with a deceitful purpose; for example, with the design of placing the property purchased beyond the reach of creditors or the process of the courts for the execution of decrees; and of the revenue officers, for the realisation of arrears of revenue; or in order to make a settlement of it in favour of a particular party, not in accordance with the law of inheritance. Sometimes, however, parties follow the practice in good faith, actuated not uncommonly by superstitious motives, by which they are induced to make purchases in the name of some member of the family who is deemed fortunate, or in the name of a deceased person who is held in veneration among them, or perhaps in the name of one of their gods.

10. It appears to be thought that the practice is growing less frequent, and now that Europeans are at liberty to acquire lands openly, and it is declared that there is no objection to native judicial functionaries holding lands, provided they register them; and since measures have been taken to render the responsibilities of landholders less troublesome to them, there are fewer inducements for the real purchaser to keep out of sight, while experience has shown that these underhand transactions are far from secure. It is to be expected, therefore, that the practice will fall off still more without the direct interference of the Legislature.

11. I am directed to add, that adverting to the terms of your letter of the 5th November 1838, from which it appears that the result of these inquiries may be wanted for the purposes of the Sale Act now in preparation, the Commissioners have not considered that they were required, or that it was necessary on the present occasion to accompany these reports with any recommendations.

I have, &c.

Indian Law Commission, 31 October 1840.

(signed) *J. C. C. Sutherland*, Secretary.

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission.

(Circular.)

Nos. 32, 33, 34, and 35.

To Superintendent of Revenue Bombay, and Secretaries of all Boards of Revenue.

Nos. 28, 29, 30, and 31.

To Registers of all Sudder Courts.

Dated 30 June 1837.

Sir,

I AM directed by the Indian Law Commissioners to request that you will lay the following communication before the Court* for the consideration of the Judges †.

* Board.
† Members.

2. The Indian Law Commissioners have had before them certain correspondence between the Calcutta and Allahabad sudder courts and government on

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on the subject of the rules which have been issued by those courts for preventing subordinate judicial officers from acquiring landed property secretly, or holding it under feigned names. This correspondence was laid before the Indian Law Commission by the Government of India in connexion with the more general question of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others. The Commission are fully impressed with the inconveniences which result from the common Indian practice of purchasing and holding property in fictitious names, but they feel that it would be unsafe to make a general change in the existing law on so important a point without a fuller knowledge than they now possess of the circumstances under which the practice has sprung up in every part of India. With this object, I am directed to request that you will obtain the opinions of the Judges* on the following points:

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your Court† ?

2d. If so, when did that practice originate, and what were the circumstances that induced it?

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object.

* Members.

† Board.

(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
30 June 1837.

(True copy.)

(signed) *J. C. C. Sutherland*, Secretary.

(No. 1224.)

From *J. Hawkins*, Esq. Register of the Sudder Dewanny and Nizamut Adawlut at Fort William, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 23 Nov. 1840. No. 13.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, C. Tucker, Esqrs. Judges, and J. F. M. Reid, Esq. Officiating Judge.

With reference to Mr. Officiating Secretary Grant's letter (No. 28), dated the 30th June 1837, on the subject of holding lands under fictitious names, I am directed to state, for the information of the Indian Law Commission, that previously to giving their own opinion on the questions proposed, the Court considered it proper to require the sentiments of the judges of the zillah and city courts within their jurisdiction, who were well able to illustrate the local and practical bearings of the question.

2. An abstract has been carefully prepared in this office of the returns of the local authorities. In that paper (which is herewith forwarded) the causes which are believed to have led to the practice of holding lands under fictitious names are enumerated *seriatim*, and the measures which are considered likely to put a stop to the practice are pointed out.

3. The Court entirely concur in the sentiments expressed by the local authorities, as to the public inconveniences which arise from the practice in question, and the fraudulent objects which are facilitated by it. They are also of opinion that it would be expedient to prohibit the practice in an effectual manner.

4. The practice is so general, and has so long received the sanction of the courts of law, that it would be difficult to provide a remedy for the evil. But the court still think that the difficulty should not deter the Legislature from the attempt.

5. As a preliminary measure, a majority of the Court would recommend the establishment of a general registry of all transfers of immovable property, by rendering it imperative on parties to register all deeds of the nature of those described in Sect. 3, Regulation XXXVI. 1793, and the corresponding enactments for the provinces of Benares and the ceded and conquered provinces,

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with the exception perhaps, of leases for very small portions of land. Should the Government determine on the adoption of the measure, the details may be settled hereafter.

6. Should the general registry be established, parties should be required to register within a prescribed period, in the name of the real proprietors, all deeds not already registered, and in the event of any deeds under fictitious names having been already registered, the parties should be required to register them again in the name of the real proprietors.

7. These provisions with a positive prohibition against the recognition by the courts of justice of any deed or title under fictitious names, after the period prescribed for a general registry, would, it is considered, tend to put a stop to the practice.

8. Mr. Braddon, however, adverting to the prevalence and duration of the practice of holding lands under fictitious names, and the recognition of it by the courts of judicature, is disposed to question the expediency of legislating upon the subject. He is of opinion, that nothing short of subjecting the property to forfeiture, would effectually put a stop to the practice, and he cannot but regard so severe a penalty as very disproportionate to the offence. But in the event of its being determined to pass rules upon the subject, he still thinks they should apply to future transactions, and not to those which have already taken place.

9. Mr. Braddon further observes, that as the Government have already expressed their opinion against rendering the registry of all transfers of land imperative, it seems almost useless to re-urge the consideration of the subject. He, however, has no reason to suppose that the measure would be attended with any great hardship or inconvenience to the parties concerned in the transfer, if the registry was made by the Cazee of the Pergunnah in which the property may be situated.

I am, &c.

Fort William, 17 May 1839. (signed) *J. Hawkins*,
Register.

ABSTRACT of the Returns to the Circular Order of the 21st July 1837, regarding the practice of holding Lands in False Names.

1. (I.) THE first question proposed by the Indian Law Commission to the local judges is, "Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your courts?"

2. The practice is said to be general in the districts of Moorshedabad, Tipperah, Sarun, Sylhet, Rajshahye, Burdwan, Nuddea, Dacca, Midnapoor, Cuttack, Mymensing, Patna, Behar, Rungpoor, Dinagepoor, Bhaugulpoor, and 24 Pergunnahs, but not to prevail to any great extent in Backergunge, Shahabad and Purneah. In Hooghly one-third, and in Beerbhoom two-thirds of the lands are said to be held in fictitious names.

3. (II.) The next question, "When did the practice originate, and what were the circumstances that induced it?" resolves itself into two, first, the origin of the practice, and secondly, the causes which gave rise to it.

Messrs. J. Curtis, R. P. Nisbett, A. Smelt, J. F. G. Cooke, J. H. Patton, A. J. Macdonald, Asst. J. H. D'Oyly, F. W. Russell and C. G. Udny.

4. With reference to the first of these points, the remarks of the Ju ges of East Burdwan, Nuddea, Backergunge, Dacca, Hooghly, Dinagepoor, Beerbhoom, Moorshedabad, and Sarun, are to the effect that the practice is of long standing, and must have existed previous to the year 1793, as it is mentioned in the Regulations, and laws are enacted against it, but that they cannot assign its origin to any particular time.

Messrs. A. Smelt, H. Moore, A. Dick, H. V. Hathorn, W. Cracroft, J. W. Templer, W. Dent, W. A. Pringle, J. H. D'Oyly, H. Stainforth, R. Barlow, and H. S. Oldfield.

5. In the opinion of the Judges of Backergunge, Chittagong, Midnapoor, Cuttack, 24 Pergunnahs, Patna, Shahabad, Purneah, Bheerbhoom Sylhet, Rajshahye, and Tirhoot, the practice may be regarded as the natural effect of the exactions of the native princes, and their subordinate local officers, as well as of the system which required personal service from wealthy zemindars, and entailed other responsibilities on the possession of landed property. And though insecurity of life and property has ceased with the Mahomedan government, the practice is continued for other, and those generally, dishonest purposes.

6. The

6. The Judges of Nuddea and Mymensing, ascribe the practice entirely to the cunning of the natives. Messrs. R. P. Nisbett, & G. C. Cheap.

7. And one officer, the Judge of Jessore, considers it to have originated entirely from "the fiscal regulations of Government, by which landed property was put up for sale in satisfaction of arrears of revenue." Mr. J. F. Cathcart.

8. As regards the second point, the circumstances which induced the practice, the opinions of the local authorities are exceedingly various. The following is an enumeration of the ends for the promotion of which the practice is resorted to.

9. The judges who concur in each of the opinions are mentioned at the end of each statement.

10. (1.) It enables debtors to defraud their creditors.—The Judges of Dacca, Cuttack, Patna, Behar, Rungpoor, Dinagepoor, Bhaugulpoor, Moorshedabad, and Sylhet. Messrs. J. F. G. Cooke, H. V. Hathorn, J. W. Templer, J. C. Brown, J. A. Shaw, A. J. Macdonald, Assist. T. Wyatt, F. W. Russell, and H. Stainforth.

11. (2.) It enables zemindars to evade the demands of Government in cases where estates are sold for arrears of revenue, and a portion of the demand remains unliquidated from the proceeds, for the recovery of which Government could put up to sale other estates of the defaulting zemindars.—The Judges of Midnapoor and Cuttack. Messrs. A. Dick, and H. V. Hathorn.

12. (3.) It enables landholders to evade the payment of revenue to Government by pretended alienations in favour of idols.—The Judge of Sylhet. Mr. H. Stainforth.

13. (4.) It affords a means of evading the law which prohibits a sharer in a joint undivided estate from purchasing the property when brought to sale for arrears of Government revenue.—The Judges of Sarun, Tipperah, and Sylhet. "There is, I think, (observes the Judge of Sarun,) little doubt that it is chiefly ascribed to the system of joint and undivided land tenures, so common in the country, as well as to the nature of the law as connected with the sale of such estates for arrears of Government revenue. No sharer is allowed on these occasions openly to bid or purchase in his own name; whereas it is notorious that joint estates are often sold in consequence of one or more of the partners withholding their proportion of the Government revenue, with the fraudulent intention of purchasing themselves, or that they are bought by some of the co-sharers. As the law, however, does not recognise them as purchasers, they are necessarily compelled to hold the property under a fictitious name. It is true that such sales are declared illegal and liable to be cancelled, but the difficulty of ascertaining the fact effectually nullifies the force of this provision, and at all events the sale cannot be annulled if more than two years have elapsed from the date on which it took place." Messrs. C. G. Udney, D. Pringle, and H. Stainforth.

14. (5.) It affords a means of evading the prohibition against public officers purchasing lands at revenue sales.—The Judges of Midnapoor, Cuttack, Patna, Behar, and Bhaugulpoor. Messrs. A. Dick, H. V. Hathorn, J. W. Templer, J. C. Brown, and T. Wyatt.

15. (6.) It enables native officers of Government to evade the rule which requires them to register all acquisitions of landed property, and thereby to avoid exciting suspicions against them. — The Judges of Cuttack, 24 Pergunnahs, Bhaugulpoor, and Rajeshahye. The last-mentioned authority remarks, "Were the names of our native officers, or those of the dependants of the great zemindars divulged, some inquiry would of course be instituted. If an individual, drawing a salary of a few rupees per month, were recorded as the purchaser of an estate of considerable value, and the question, whence came his funds? might lead to important disclosures as to the probity of the recorded purchaser." Messrs. H. V. Hathorn, W. Cracroft, T. Wyatt, and R. Barlow.

16. (7.) The gomashtahs of ignorant, dissipated, or absent proprietors, purchase lands with their master's funds in their own names, with a view to claim them at a seasonable time.—The Judges of Cuttack, Bhaugulpoor, and Rajeshahye. On this point Mr. Barlow observes, "I have had occasion to observe, that when in joint undivided estates one of the parties was a minor, the proceeds of the entire estate have generally been appropriated to the purchase of lands, (benamee), resulting, on a minor's gaining his majority, in violent breaches of the peace, sometimes in the imprisonment of the proprietors themselves, in expensive lawsuits, and not unfrequently in the utter ruin of the whole family. The same evils are to be met with in cases where the proprietors are females, and their business conducted by mooktears. These thrive so long as suits are going on in our courts; it is their interest to encourage them; Messrs. H. V. Hathorn, T. Wyatt, and R. Barlow.

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them; sums of money are entrusted to them for the conduct of these cases, which are very often laid out in the realisation of landed property, bought under feigned names."

Messrs. H. V. Hathorn, H. Stainforth, and W. Cracroft.

17. (8.) A sharer in a joint family property purchases estates under other names, with a view ultimately to appropriate such estates, acquired out of the common stock, to himself.—The Judges of Cuttack, Sylhet, and 24 Pergunnahs.

Messrs. H. Moore, J. H. Patton, J. W. Templer, H. Stainforth, and H. S. Oldfield.

18. (9.) The practice enables persons to secure property to their sons unaffected by the claims of other members of their family.—The Judges of Chittagong, Hooghly, Patna, Sylhet, and Tirhoot.

Messrs. G. Cheap, J. W. Templer, W. Dent, J. C. Brown, T. Wyatt, J. H. D'Oyly, J. F. G. Cooke, and H. S. Oldfield.

19. (10.) It enables zemindars, and particularly female, to evade the laws which make them responsible for certain police duties, such as given information of the commission* of the offenders.—The Judges of Mymensing, Patna, Shahabad, Behar, Bhaugulpoor, Beerbhoom, Dacca, and Tirhoot.

* *Sic orig.*

20. (11.) Estates are held under other names, with a view to furnish fictitious security for fraudulent purposes. "Landed proprietors, native officers (about to be entrusted with public money), traders, bankers, and the like, all of whom, on various occasions, are called upon to furnish security in their several pursuits and mercantile transactions, continue to avoid eventual responsibility, by always having a portion of their landed property in the name of a servant or dependant, which is ever ready to be pledged whenever security is required of them, and which if at any time declared fortified or obnoxious to sale, is immediately claimed by the benamee holder, who has little difficulty, with the assistance of the actual proprietor, in proving his ostensible right to the property.—The Judge of Cuttack."

Sic orig.

Mr. H. V. Hathorn.

21. (12.) The practice is sometimes resorted to "by landed proprietors with a view to enhance the rents of their tenantry, which they effect by suspending the Government dues, and thereby causing a sale, when they themselves repurchase under fictitious names, and then, as new purchasers, enter into fresh engagements with their tenants."—The Judge of Cuttack.

Mr. H. V. Hathorn.

22. (13.) Fukeers, gossains, and other descriptions of religious mendicants, who profess to live entirely upon charity, frequently possess lands under fictitious names.—The Judge of Cuttack.

Mr. H. V. Hathorn.

23. (14.) Indigo planters were in the habit of holding lands in the names of others, from an impression that they were prohibited from holding or farming lands.—The Judge of Cuttack.

Messrs. J. H. Patton, C. G. Money, and D. Pringle.

24. Lastly, the practice is ascribed to the subdivision of property, and the introduction of the putnee or underletting system, sanctioned by Regulation VIII. 1819.—The Judges of Hooghly, Sarun, and Tipperah.

25. III. The third question proposed is, "Are there any advantages in the continuance of that practice, and if there be, what are these advantages?"

Messrs. J. Curtis, R. P. Nisbet, A. Smelt, J. F. G. Cooke, A. Dick, J. F. Cathcart, H. V. Hathorn, G. C. Cheap, W. Cracroft, J. C. Brown, F. W. Russell, R. Barlow, and H. S. Oldfield.

Messrs. J. F. Cathcart, A. Dick, J. H. Patton, J. Templer, J. A. Shaw, W. A. Pringle, J. H. D'Oyly, J. F. G. Cooke, and C. G. Udney.

26. The Judges of East Burdwan, Nuddea, Backergunge, Dacca, Midnapoor, Jessore, Cuttack, Mymensing, 24 Pergunnahs, Behar, Moorshedabad, Rajshahye, and Tirhoot, report, that advantages there are none; on the contrary, add the Judges of Jessore, Midnapoor, Hooghly, Patna, Rungpoor, Purneah, Beerbhoom, Dacca, and Sarun, the practice gives rise to deceit and chicanery, and tends to increase the intricacy of suits connected with landed property.

Messrs. H. Stainforth, and H. Moore.

27. The Judges of Sylhet and Chittagong, appear to regard the practice in a more favourable light. In the opinion of the former, it affords a facility for "honestly securing land for the benefit of others by purchasing it in their names, and avoiding what appears an injustice in the Hindoo law." The latter deprecates all interference with the existing rule. His views are here given at length.

28. "That the system is radically bad is acknowledged; yet opinion appears to deprecate interference withe ustom, further than what the law at this time dissents to. When the practice is induced by harmless intention, prohibition would

Sic orig.

would be considered harsh, and even when aimed against fraud, although the intention of Government is to add further security to property, or to act for the general benefit, yet in endeavouring to effect this object by denouncing the acquisition of property in fictitious names, and by annexing penalties in cases of infringement of the law, a shackle or two would be put on the ready transfer of land. It cannot be argued that there are advantages in the practice other than freedom of commerce; it may, however, be said, that the transaction is in its nature one not extremely difficult of deduction, for the real owner is generally in possession of the land, and I am not aware that it is an evil that has amounted to that height that legislative measures are called for. Great fear may be entertained that in seeking to put an end to one malpractice, we open a door to another; greater taint being given to the title, more concealment and covering than at present obtains must be had recourse to.

29. "It is an object to guard against fraudulent schemes, yet of moment not to intermeddle with the workings of society. Our courts respect the acquisitions made in fictitious names, that are not barred by law; not, however, to the injury and detriment of third persons, or the just claims of creditors: constituted with equitable jurisdiction, we adjudge as if a statute directed against devices had place in our code.

30. "There is a drawback also which corrects the practice; the wholesome apprehension that the tables may be turned on the practisers themselves. I have known claims asserted by individuals in whose names the deeds of conveyance were made out.

31. "It appears to me that the greatest difficulty would be experienced in putting an end to the system. It is characteristic of the people of India to be imbued with a dread of what may befall hereafter; habit and feeling would induce them to act in defiance of the law, and they would have all the sympathies of society with them; even Government has abrogated forfeiture in cases of public sales, except in the proper instance of certain public officers being purchasers; and however much the practice is to be deprecated, yet I am convinced a legal enactment interdicting it, would be evaded, and a law of forfeiture or penalty could scarcely be executed without risk of injustice to individuals."

Mr. H. S. Oldfield.

32. The Judge of Tirhoot is of opinion that the servants of Government, whether native or European, should not be prohibited from becoming purchasers of landed property. He observes, "I see no advantages in laws forbidding the officers of Government, European or native, from becoming purchasers of landed property generally. If Government steadily, without fear or favour, invariably visited the transgressions of corrupt men with punishment, there would be no necessity for these prohibitory laws which fail against dishonesty, and which are but records of the opinion of Government that all its servants are prone to slip, dishonesty being the rule, and honesty the exception. The laws against trading are not so objectionable, because this is more speculative; but holding land is like holding stock, a mode of funding with the view of obtaining a secure income to retire upon, or for the support of a family, and I should have thought that Government would have been better pleased to number among its servants men of landed property than mere adventurers. So long as the name of a real person is recorded, of what consequence is it to Government whose money paid for the property, and to ascertain this reality, the collectors may summon the parties to attend, or if in other districts, might have the necessary inquiries made through the collectors of those districts under the provisions of Section 25, Regulation XLVIII. of 1793, and Section 21, Regulation VIII. of 1800."

33. It may be observed, that the Judge of Tirhoot has overlooked the reasons for which Government are averse to their native employers holding lands. *See* the Circular Order, No. 76, dated the 24th September 1824.

34. (4.) The fourth and last question of the Indian Law Commission is, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect?

35. 1. The following remedial measures are proposed by the different authorities.

 36. (1.) The

Messrs. R. P. Nisbet, A. Smelt, J. F. G. Cooke, J. H. Patton, H. V. Hathorn, W. Cracroft, J. C. Brown, J. A. Shaw, A. J. Macdonald, Assist. T. Wyatt, J. H. D'Oyly, T. W. Russell, D. Pringle, C. G. Udny, R. Barlow, H. S. Oldfield, and W. A. Pringle.

36. (1.) The registry within a given time, say six or 12 months, of all benamee tenures now existing. The Judges of Nuddea Backergunge, Dacca, Hooghly, Cuttack, 24 Pergunnahs, Behar Rungpoor, Dinagepoor, Bhaugulpoor, Beerbhoom, Moorshedabad, Tipperah, Sarun, Rajshahye, Tirhoot, and Purneah. The Judge of the last-mentioned place would restrict the registry to lands held by the officers of Government.

Mr. J. H. Patton.

37. (2.) The registry of estates held in common tenancy in which a division of the property has taken place.—The Judge of Hooghly.

Mr. J. H. Patton.

38. (3.) The registry within one month of all changes of ownership.—The Judge of Hooghly.

Mr. J. H. Patton.

39. The advantages to be expected from these measures are thus adverted to: "The collector's office (observes the Judge of Hooghly) should form the depository of the valuable records, so that that authority would be in possession of a true and faithful register of all estates and properties connected with the soil, and on reference be able to furnish every possible information regarding the landed interests of litigants, and further in a marvellous degree, the satisfactory and speedy adjustment of claims to real property in courts of judicature at present so perplexing and retarded. And the Judge of Beerbhoom: "Thus the register of the collector would become a most valuable document, whereas now it is of little or no use, it would render the execution of decrees straightforward and comparatively easy, and would, I think, put a stop to all the rascality now carried on to evade that process; but to render this register efficient, a separate and responsible establishment would probably be necessary, which, however, would be well worth the expense, if it put a stop to a system, which with all its other disadvantages, has been for years the chief cause of delay in the execution of the decrees of civil courts."

Mr. J. W. D'Oyly.

40. 2. The penalties proposed for disobedience of the laws, are the following:—

Mr. J. F. G. Cooke.

41. (1.) Forfeiture of three or four years' proceeds of lands held in a false name.—The Judge of Dacca.

Messrs. A. Dick, J. H. Patton, W. Dent, J. C. Brown, T. Wyatt, and R. Barlow. Mr. J. A. Shaw. Mr. W. Dent.

42. (2.) Forfeiture of the lands.—The Judges of Midnapoor, Hooghly, Shahabad, Behar, Bhaugulpoor, and Rajeshahye. The Judge of Rungpoor recommends the confiscation of only a portion of the lands, and the Judge of Shahabad suggests, that a high premium or per centage be paid to the informer.

Messrs. J. T. Cathcart, H. V. Hathorn, G. C. Cheap, W. Cracroft, J. W. Templer, J. H. D'Oyly, J. W. Russell, C. G. Udny, H. Stainforth, and H. S. Oldfield. Mr. W. Cracroft.

43. (3.) Taking away the right to prosecute claims to land held under a false name, and declaring the person in whose name it is held, the rightful owner of such land.—The Judges of Jessore, Cuttack, Mymensing, 24 Pergunnahs, Patna, Beerbhoom, Moorshedabad, Sarun, Sylhet, and Tirhoot. The Judge of the 24 Pergunnahs suggests, for obvious reasons, that this penalty be not inflicted on those whom the Regulation terms disqualified proprietors.

Messrs. J. F. G. Cooke, J. C. Brown, and T. Wyatt.

44. (4.) The process by which the penalties proposed are to be adjudged, to consist of a summary inquiry.—The Judges of Dacca, Behar, and Bhaugulpoor.

(signed) *J. Hawkins,* Register.

Legis. Cons. 23 Nov. 1840. No. 14.

(No. 782.)

From *H. B. Harington,* Esq. Register of the Sudder Dewanny Adawlut, North Western Provinces, Allahabad, to *J. P. Grant,* Esq. Officiating Secretary to the Indian Law Commission, Calcutta.

S. D. A. N. W. P. Present, M. H. Turnbull, J. A. Colvin, W. Lambert, and W. F. Dick, Esqrs. Judges.

Sir,

I AM directed by the Court to acknowledge the receipt of your letter, No. 29, under date the 30th ult., relative to the practice which obtains in this country, of persons holding landed property in fictitious names, and in reply, to transmit, for the information of the Indian Law Commissioners, the accompanying copy of a circular this day addressed to the several judicial authorities in these provinces,

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vinces, requesting them to furnish the Court at their earliest convenience, with an expression of their opinion on the questions proposed in your letter; on the receipt of those officers' replies, they will be forwarded to your address without loss of time.

Allahabad,
21 July 1837.

I have, &c.
(signed) *H. B. Harington,*
Register.

(No. 783.—Circular.)

S. D. A. N. W. P.
Present,
M. H. Turnbull,
A. J. Colvin,
W. Lambert, and
W. F. Dick, Esqrs.
Judges.

From *H. B. Harington*, Esq. Register of the Sudder Dewanny Adawlut, North Western Provinces, Allahabad, to the Commissioners of Circuit, Session Judges, and Magistrates, North Western Provinces.

Sir,

I am directed to transmit for your perusal, the accompanying copy of a letter from the Secretary to the Indian Law Commissioners, No. 29, under date the 30th ult., relative to the practice, which obtains in this country, of persons holding landed property under fictitious names, and to request that you will furnish the Court at your earliest convenience with a report of your opinion on the several questions therein proposed.

Allahabad,
21 July 1837.

I have, &c.
(signed) *H. B. Harington,*
Register.

(No. 1458.)

S. D. A. N. W. P.
Present,
M. H. Turnbull,
A. J. Colvin, and
W. Lambert, Esqrs.
Judges.

From *H. B. Harington*, Esq. Register of the Sudder Dewanny Adawlut, North Western Provinces, Allahabad, to *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, Fort William, dated 8th December 1837.

Sir,

The Indian Law Commissioners have already been informed by my letter to your address under date the 21st July last of the Court having judged it proper to call upon the judicial authorities subject to their control, for an expression of their sentiments on the several points contained in your letter of the 30th of the preceding month, relative to the practice which obtains in this country of persons acquiring and holding lands under fictitious names; the replies received to the Court's circular, of which you have already been furnished with a copy, are herewith forwarded in original, as per annexed list, together with an abstract of them, which has been prepared in this office, and I am directed to request that you will submit the same for the consideration of the Law Commissioners.

2. With regard to the first question proposed in your letter, it will be observed, from the accompanying returns, that in a large proportion of the districts in these provinces, the practice of holding landed property in fictitious names is almost wholly, if not altogether, unknown, and that in others, where it at one time prevailed to a considerable extent, it is stated to be fast falling into disuse.

3. As respects the origin of the practice, and the circumstances which gave rise to it, the reports of the local authorities furnish but little information. It is stated to have obtained, in some parts of the country, under the native governments, and to have been resorted to chiefly with a view to escape the rapacity and extortions to which persons known or supposed to be possessed of property, whether in lands or money, were constantly exposed, not only on the part of the ruling powers, but of every petty officer of Government concerned in any way in the administration of revenue or police

4. Though the practice, however, existed previously to the accession to the Dewanny of the East India Company, it appears not to have attained any great height until after that period, when the prohibitory laws introduced against Europeans as well as the native officers of Government employed in the Revenue Department, purchasing directly or indirectly any lands disposed of by the collector at public sale, or as regards the latter, against being concerned,

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on their private account, in the collection or payment of the revenue of any lands in the zillah, either as farmers, sureties, or otherwise; and the responsibilities imposed upon landholders generally, for the preservation of the peace within their estates, and the punctual payment of the public revenue, which extended to their persons, as well as to any other property in their possession, naturally encouraged recourse to a measure which enabled those who were interdicted altogether from holding lands to evade the law; and afforded to others who were desirous of investing their capital in such property, without incurring the responsibilities and duties legally attaching thereto, the ready means of gratifying their wishes with impunity and comparative security.

5. The extent to which the native officers of Government in the Revenue Department became possessed of estates in these provinces within the first few years of the British rule, by taking advantage of the means which recourse to the practice under consideration offered of concealing such acquisitions from their official superiors, will, as noticed by the Judge of Ghazeepore, be found fully detailed in the preamble to Regulation I. of 1821; and to the practical operation of that and the subsequent Regulations on the same subject, added to the difficulty not unfrequently experienced by the real owners of property acquired in a fictitious name, of establishing their title to it, when the same may have been disputed by the persons in whose names it was held, or by any other claimants, may in a great measure be attributed the discontinuance of the practice, which, as previously noticed, is rapidly on the decline. The recent enactment, also, authorising Europeans to acquire and hold property in land, or in any emoluments arising out of land, either in perpetuity or for any term of years, by removing the cause which led individuals of that class to have recourse to the measure in question, will of course tend still further to put a stop to it.

6. It appears to be generally admitted that the practice is attended with no public advantage, except that it induces parties possessed of capital to embark that capital in landed property, by taking it in a fictitious name, which they would not do were they liable to the personal process to which the ostensible owners of such property are amenable.

7. The objections which persons of this description make to holding lands in their own names are, that it not only renders them answerable in their persons and in any other property of which they may be possessed for the payment of the public demands, but that it also exposes them to the petty annoyances and degradation which the native officers of police have it in their power to inflict on zemindars who incur their enmity, as well as to the extortions of those officers, who, under the pretext that crimes have occurred, or that offenders are concealed within the precincts of their estates, threaten, unless they satisfy their demands, to report them to the magistrate, which they are well assured will lead to their being summoned to the sudder station, in some instances at a great distance from their homes, to answer for their alleged misconduct, and is not unlikely to terminate in their being severely fined, and perhaps imprisoned.

8. With regard to the latter objection, the Court observe, that the obvious remedy is to render the responsibility of the landed proprietors, as respects the preservation of the peace on their estates, as little burthensome and vexatious as possible, consistently with the attainment of that object, and in all cases to allow every respectable landholder, whether zumeendar or farmer, the option of appointing an agent to answer whatever calls may be made upon him by the Mofussil police or the magistrate, and to attend at the cutcherries of those officers whenever his presence may be required in regard to any matter connected with his estate, provided, of course, that such appointment be not considered as exonerating the zumeendar from responsibility, (not extending, however, to his person,) on account of any penalty awarded against his representative, or to exempt him from punishment under the general Regulations, in the event of its appearing that he had neglected to make proper provision for, or had failed in, the discharge of the duties required of him by law.

9. With respect to the second objection, and the same remark indeed applies equally to both, it may be sufficient to observe, that any measure which enables the real proprietor of an estate to evade the duties or responsibility which the law has prescribed as the conditions of his holding such property, must, on general principles, be objectionable, and should be disallowed.

10. But

10. But whatever may be the advantages of the practice, the Court are of opinion that they are more than counterbalanced by the chicanery and fraud to which it gives rise, in the opportunity that it holds out to the dishonest landholder of defrauding his creditors by removing his property by a fictitious sale from the grasp of the law, while it at the same time enables him to escape the personal process to which he would be liable on account of the Government demands on the estate.

11. The practice has also been found to promote litigation, particularly between the heirs of the real owner of the property and the fictitious holder, where the latter, from bad faith, either declares the proprietary right to be vested in himself, or denies the title of the opposite party, which, owing to the clandestine manner in which such transactions are necessarily conducted, he knows it will be almost impossible to establish; while the absence of all documentary or other credible evidence of the real nature of the transaction between the parties not unfrequently involves the case in such doubt and obscurity as to render it a matter of very great labour and extreme difficulty, amounting in some instances almost to an impossibility, to decide it satisfactorily.

12. Under the circumstances, the Court are disposed to concur in the opinion expressed by the majority of the officers whom they have consulted on this occasion, that the practice should be prohibited by law.

13. With regard to the most effectual mode of putting a stop to it with the least risk of injustice to individuals, the Court are of opinion that it will be sufficient to declare, by a legislative enactment, that all property ascertained to be held after a certain date in a fictitious name, as well as any property which may hereafter be acquired in that mode, will be liable, on the same being brought to the notice of Government by the revenue authorities, to confiscation, or to such other penalty as the Government, on a full consideration of the circumstances of the case, may think proper to impose.

14. The foregoing remarks are not intended to apply to lands *bonâ fide* purchased in the name of a son or other relative, or indeed of any other person, and intended for his or their benefit during the lifetime of the purchaser, or after his death; where such purchases may not be open to any suspicion of fraud, and the name of the parties on whose account they were made may be duly declared and registered at the time of sale, the Court are not aware of any objections to them. The same remark is of course equally applicable to *bonâ fide* transfer of property during the owner's lifetime.

I have, &c.

(signed) *H. B. Harington,*
Register.

Allahabad, 8 December 1837.

Returns to C. O. No. 783 of the 21st July 1837.

Delhi Division.

No.
1. Commissioner of Delhi.
2. Judge of Delhi.
3. Magistrate of Paneeput.
4. Ditto - of Hissar.
5. Ditto - of Delhi.
6. Joint ditto of Rhatuck.
7. Officiating ditto of Goorgaon.

Meerut Division.

8. Commissioner of Meerut.
9. Judge of Shaharunpore.
10. Ditto of Meerut.
11. Ditto of Allighur.
12. Superintendent, Dehra Dhoon.
13. Magistrate, Seharunpore.
14. Ditto - Moozuffernuggur.
15. Ditto - Meerut.
16. Officiating ditto, Bolundshahur.
17. Ditto - - - Allighur.

Rohilcund Division.

No.
18. Commissioner of Rohilcund.
19. Officiating Judge of Moradabad.
20. Magistrate, Bijnaur.
21. Ditto - Moradabad.
22. Ditto - Suheswan.
23. Joint ditto, Kasheepore.
24. Ditto - Bareilly.
25. Ditto - Shajehanpore.

Agra Division.

26. Officiating Commissioner of Agra.
27. Judge of Agra.
28. Ditto - Furruckabad.
29. Ditto - Mynpooree.
30. Ditto - Etawah.
31. Magistrate, Muttra.
32. Ditto - Mynpooree.
33. Ditto - Etawah.
34. Ditto - Agra.

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Allahabad Division.

No.
35. Officiating Commissioner, Allahabad.
36. Judge, Cawnpore.
37. Ditto, Futtehpore.
38. Ditto, Bundlekund.
39. Ditto, Allahabad.
40. Officiating Magistrate, Cawnpore.
41. Magistrate, Futtehpore.
42. Ditto - Humeerpore.
43. Officiating ditto, Banda.
44. Joint ditto, Allahabad.

Benares Division.

45. & 46. Commissioner of Benares.
47. Judge, Goruckpore.
48. Ditto, Azimgurh.

No.
49. Judge, Jaunpore.
50. Ditto, Mirzapore.
51. Ditto, Benares.
52. Ditto, Ghazeepore.
53. Magistrate, Goruckpore.
54. Officiating ditto, Azimgurh.
55. Ditto - - - Jaunpore.
56. Ditto - - - Mirzapore
57. Ditto - - - Benares.
58. Ditto - - - Ghazeepore.

Saugor Division.

59. Commissioner of Saugor.
60. Principal Assistant, Saugor.
61. Ditto - - - - Jubbulpore.
62. 1st Junior Assistant, Seonee.
63. Ditto - - - - Dunmow.
64. Ditto - - - - Baitook.

(signed) *H. B. Harington.*

ABSTRACT of the Returns to the Circular Order regarding the Practice of holding Lands in Fictitious Names.

Delhi Division, Commissioner T. T. Metcalfe.

FROM personal knowledge, cannot state that the practice does or ever has existed; but sees no objection to a law to prevent its occurrence, which would be very salutary in putting a stop to a pernicious practice, and in bringing to light any instances in which it might have existed heretofore.

Is of opinion, that the most sure, the most convenient, and at the same time the most just provision of law, to prevent the practice, would be an Act of Government, rendering all landed property proved in a court of law to have been acquired and held under a fictitious name, after a date to be prescribed, liable to forfeiture, and rendering all landed property now held in a feigned name, upon similar proof, also liable to forfeiture, if not duly registered within one year after the promulgation of the Act, in a book to be kept for the purpose in the office of every judge or collector of land revenue.

Judge, Mr. C. Lindsay.

The practice of holding landed property under fictitious names is almost wholly unknown in the Delhi territory; considers therefore, that any further observations on the subject from him are unnecessary.

Magistrate and Collector of Paneeput, Mr. A. Fraser. Joint do. Rohtuck, Mr. C. Gubbins.

Have no reason to believe that in any one instance is land held under fictitious names in their districts; no further observations are therefore necessary.

Hissar, Magistrate, Mr. S. Brown.

The practice has never obtained in his district, and he believes not in any other of the divisions of the Delhi territory generally, though common in the Dooab and Rohilcund. The practice originated with the introduction of our rule into these provinces, and of late years it has been greatly extended. It arose, and is still principally to be found, in instances where public or private debtors, wishing to avoid the demands against them to which their estates might be liable, either effected a fictitious transfer of such as they had at the time, or, if a new acquisition, bought and took in mortgage in the name of their dependants or of men of paper; it is also adopted to escape the calls of the police. It would be difficult under this view to point out any advantage in its continuance, but its prevention appears to be beyond the grasp of the law.

Delhi, Magistrate and Collector, Mr. P. C. French.

Has no personal knowledge of the practice alluded to, but it is currently reported to be very common in the city of Delhi; and property to a large amount is said to be held under feigned names.

2. The date of the origin, allowing the practice to prevail, cannot be easily fixed; but of the motives which induced it, the principal, it is probable, were to conceal, under former tyrannical rulers, wealth from the rapacity of power; to defraud creditors of their dues, defeat the ends of justice and law, by secreting the means which might satisfy them, and more usually to lull suspicion of iniquitous

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iniquitous accumulations, with the view longer to pursue dishonesty and corruption, under the apparent garb of poverty and distress.

3. No possible advantage can be imagined from its continuance.

4. Thinks the most certain and least inconvenient provision of law for putting a stop to the custom would be an Act of the Legislature, making all property proven in a court of judicature to have been obtained and held under a fictitious name after a prescribed date liable to forfeiture.

Goorgaon, Officiating Magistrate and Collector, Mr. Lawrence.

It is not the practice to hold lands under fictitious names in this district; never recollects to have heard of a case of the kind in the Delhi territory. Is not aware of any fair advantages which can arise from the practice; it can only be done to evade, if necessary, either the demands of creditors or the laws of the land. Forfeiture would most surely put a stop to the practice; and though such a rule might in particular cases press hardly on an individual, this might be remedied by Government remitting the penalty, should it be considered expedient in any case; any punishment short of forfeiture would, he is inclined to think, be sufficient.

Meerut Division, Commissioner, Mr. H. S. Boulderson.

The practice of holding landed property under fictitious names, cannot be said to be common in the districts of this division; instances might doubtless be found, but the practice has very greatly abated, which is attributable to the publicity with respect to transfer of property given by the collectors' registers and the prevention by the collectors of the possession of unregistered persons whenever any contest arises.

2. Cannot state the origin of the practice; presumes that lands bought by fathers in the name of their children, and such like palpable transactions, the intention of which is evidently to save litigation after the real buyer's death, are included under the odium of fictitious name holdings.

3. There are no advantages in the continuance of the practice, which can be necessary only for the purposes of fraud, committed or intended.

4. Does not think that any provisions of law could be more effectual for the prevention of the practice than those already existing; in addition to those, if it enacted that a real proprietor when he had sued an Isurfurzee in the civil court, and his right being shown, should have to pay all the costs of suit, and that a judicial officer, or any class of persons whom it might be deemed right to prohibit from the acquisition of landed property, could not recover at all, every desirable check would be put upon the practice.

Seharunpore, Judge, Mr. G. Bacon.

The practice of holding landed property under fictitious names, as far as he can learn, does not appear to be common in his district.

Knows not what advantages are derivable by the continuance of the practice to any body but those who are immediately concerned; believes such persons purchase and hold lands under fictitious names in order to secure their estates from attachment and sale, in the event of any decree of court or other legal demand being made against them.

Immediate forfeiture of the property to Government, in the event of discovery upon full legal proof, might possibly prevent the extension of the practice in those districts where it may be prevalent.

Dehra Doon, Col. Young, Superintendent.
Seharunpore, Magistrate and Collector, Mr. Conally.
Mozuffernuggur, Mr. Crawford, Magistrate.
Meerut, Judge, Mr. R. C. Glyn.

After particular inquiry, holding lands under fictitious names, is not common in the districts under their jurisdiction, nor have they ascertained an instance of its existence.

The practice was first introduced under the British Government by Europeans and native public officers, the former precluded from holding lands in their own names, and the latter when not so precluded considering it inexpedient to appear as landed proprietors in the districts in which they hold official situations; Europeans will have no further occasion for employing feigned names, and since the disclosures and restitutions made by the special commission, secret purchasing by native public officers has fallen into disuse, and is very rarely had recourse to by individuals of other classes, as Isurfurzee conveyances of lands, houses, and other real interests, have never been recognised in the civil court of this district; such property being always considered to belong to the persons in whose names it appears registered; with reference to this district, sees no necessity for interference by legislative enactment.

Meerut, Magistrate and Collector, Mr. France.

The practice is by no means general in his part of the country; the only circumstance he is aware of to induce a person to have recourse to it, would be to evade any penalty to which he would be liable for holding it himself.

Should conceive that no measure would be more effectual to suppress the practice than to declare all lands which may in future be recorded under a fictitious name, should be rendered liable to forfeiture.

Boolundshakur, Officiating Magistrate, Mr. G. H. Alexander.

The practice does not prevail.

Alligurh, Mr. J. Neave.

The practice of holding lands under fictitious names, though not common, does exist in his district, and has originated since we have had the country; fears that its objects in the majority of cases is to conceal purchases made by servants of the Government, and where this is not the case, it has been had resort to for the provision of some relative whose name is used to prevent dispute hereafter. To check the former, the annulment of the sale so effected, and fine to the extent of the purchase-money, would perhaps tend to remedy the evil; the sellers generally being the parties cajoled, does not think any interference with them necessary.

Alligurh, Magistrate and Collector, Mr. T. P. Woodcock.

The practice obtains to a very trifling extent in his district; it had its origin among the omlah of the courts, who desired to conceal the circumstance of their possessing landed property. Is not aware of any advantages which its continuance can afford to either Government or the people.

Immediate attachment of landed property so held, would be the securest method of abolishing the practice.

Rohilcund Division, Commissioner, Mr. T. J. Turner.

The practice of holding landed property under the names of other persons than the real owners was of frequent occurrence many years back, but is now almost unknown.

It was resorted to for several reasons; 1st, to conceal the acquisition of landed property by persons who, from their official situations, were prohibited from making fresh purchases; 2dly, with a view of eluding the vexatious interference and oppression of the Government native officers, revenue and police; and 3dly, to save the property from sale, in satisfaction of private debts. As no advantage is now to be gained by adhering to it, the practice has been discontinued; does not consider any new legislative Act requisite.

Moradabad, Officiating Judge, Mr. Okeden. Officiating Magistrate and Collector, Mr. Blunt.

The practice does not prevail in this district; are not aware of any advantage in allowing such a practice, which should be declared illegal. If an Act were passed prohibiting the practice, and declaring all lands so obtained after due proclamation of the law, liable to forfeiture, the custom would cease, and no individual suffer injustice.

Bijnore, Officiating Magistrate, Mr. Sympson.

The practice of holding lands is one of common occurrence in this zillah; cannot speak positively as to the origin of it; conceives, however, that the following circumstances have led to the continuance, if not to the introduction of it; the prohibition against Europeans holding lands; also against the officers of Government purchasing lands at public sales; a want of confidence on the part of the natives of India in the British Government when they first became subject to it; and the duties connected with the police attaching to the holders of land. The cases of persons prohibited by the Regulations from holding lands, and who do so under fictitious names, are obviously an evasion of the law.

Is of opinion that no advantages are likely to be obtained by a continuance of the present practice, beyond those which would appear to resultto the parties concerned.

Instructions issued to the several collectors, calling their attention to this practice, and strictly forbidding them to admit on their records the names of any individuals who may be ascertained not to be the real proprietors, might possibly tend to check such practice in future; and an enactment, declaring that whenever a person holding lands under a fictitious name may sue the real proprietor, no evidence of the nature of the transfer will be admitted.

Kasheepore, Joint Magistrate, Mr. C. Fagan.

No instance has come under his notice of property having been held under fictitious names, nor is he aware of the existence of any advantages for the continuance of a practice so irregular, and apparently calculated for none but fraudulent

fraudulent purposes. The penalty of the forfeiture of the land held under a fictitious name appears to be the most efficient method of eradicating the practice.

Suheswan, Officiating Magistrate, Mr. J. A. Craigie.

The practice is unknown in his district. Is of opinion that the custom is replete with disadvantage, and devoid of a single counterbalancing benefit; holding out encouragement for chicane, and facilitating the evasion of repeated enactments, more especially as relates to land held by native officers of Government.

To prevent the continuance of such practice, the most effective check would be the passing an Act, that all lands so held shall in future be forfeited to Government. Would suggest that mortgage seems also to afford a field for fraudulent practices, and a similar enactment regarding all such engagements might be passed.

Bareilly, Judge, Mr. W. Cowell.

No return.

Bareilly, Magistrate, Mr. W. H. Benson.

Believes that the practice does not obtain in the district of Bareilly; that there are instances of land being held by persons in the name of their children or dependants; several circumstances appear to have led to the practice; the chief appears to be the desire to escape personal restraint and responsibility for Government balances. The practice can hardly be said to have originated under our rule; the earliest Regulations make provision against leasing in fictitious names on account of the injury likely to be sustained by the public revenue by it. The advantages are but slight to a punctual payer of the Government revenue; on the other hand, the disadvantages initiating against the punctual realisation of the public revenue, where the practice may prevail to any great extent, are obvious; and where the principals may be officers holding a public situation, and the fact of ownership may be concealed, the course of public justice may be obstructed from quarters which might be difficult to ascertain, in order to remedy the mischief. In such cases the forfeiture of the estate would appear only a just punishment; but so severe a punishment does not appear called for in other cases, and a fine would seem most proper.

Orig.

Pillibheet, Joint Magistracy.

No return.

Shajehanpore, Officiating Magistrate, Mr. F. P. Buller.

Is not aware that the practice alluded to is common in his district, supposing by the term fictitious names, to be meant persons who have no existence at all.

Agra Division, Commissioner, Mr. Hamilton.

The practice does not now obtain, so far as inquiries enable him to form an opinion.

It originated, in some degree, from the rules to repress the holding of lands by native officers, and also from the desire of acquiring undue influence through connexion with an office which could not be obtained, were parties holding office known to be proprietors of estates within the circle of their duties.

Can discern no advantage in a continuance of such fictitious holding.

Would propose that the penalty of dismissal be incurred, should it be proved that any officer had withheld the communication of his being possessed of land; the prohibition against a Government officer holding land being withdrawn.

Agra, Judge, Mr. Boldero.

The practice is not common in this district; the origin of the custom cannot be clearly ascertained; it existed under the native governments, but has become more prevalent since the British rule, which is attributable to the following circumstances. Under the native government, the pen and sword offered the readiest channels to fortune and distinction; lands were held in less estimation than they now are; the landowners were more liable to injustice and oppression from the native aumils; and consequently few of the higher classes invested their money in the purchase of estates. Since the introduction of the British rule, the purchase of villages has become a safe and advantageous mode of investing money, which has naturally led to the native officers of Government (who are not allowed to hold villages in their own names), purchasing them in the names of their relations or servants. Many merchants, and other respectable men, adopt this plan to prevent their being personally subjected to the disgrace and annoyances which the native officers have it in

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their power sometimes to inflict on zemindars who may incur their enmity; this, and the liability to be summoned to the thannahs', tuhseeldars', magistrates', or collectors' courts, are the chief causes of respectable men holding lands under fictitious names. Considers that the only advantages are to the actual proprietors, who, while they reap the profits of their estates, are exempted from the many petty annoyances they might otherwise be subjected to. So far as Government is concerned, there is neither profit nor loss; the nominal landholder performing all the duties of a real proprietor, and the land being always liable to be sold for the realisation of any defalcation in the revenue.

To put a stop to relations or dependants of the native officers of Government holding lands under fictitious names, the surest method would be to rescind all restrictions to their holding them in their own names, giving them the same facility of acquiring landed property which other individuals possess.

The practice of merchants, and other wealthy and respectable individuals, holding lands under fictitious names, can only be suppressed by taking away the causes which render them unwilling to hold them in their own names. No provision of law can put a stop to the custom, so long as it is for the interest of this class of the community to continue it.

Agra Officiating Magistrate, Mr. G. F. Harvey.

Inclines to the belief that the practice in question had its origin long previous to our acquisition of these provinces. It appears to prevail in a less degree in this district than in Rohilcund. Those whom he has questioned generally agree in stating, that immediately on our assuming the country, an increase to a great extent took place in the number of such titles, most probably from the uncertainty which possessed men's minds as to the nature of the rule to which they were in future to be subjected; but as the character of the British Government became known, it again fell into disuse.

The advantage from this practice in former days is obvious; at present is induced to think it is confined to the native ministerial officers of the country, who are prohibited from purchasing estates sold for arrears of revenue, and who thus become possessed of what they would legally be unable to attain. The practice is, without doubt, considerably encouraged by the dread in which respectable zemindars are of a summons to the magistrate's court, to answer for and explain the cause of any disturbance which may occur in their immediate neighbourhood.

The practice is admitted on all hands to be fast falling into disrepute; and believes no objection would be offered by those most concerned to an immediate enactment for its abolition, giving of course time for the change to be gradually effected.

Mattra, Magistrate and Collector, Mr. W. H. Tyler.

The practice was very general formerly, but is not so now; indeed, it may be said to be almost extinct in this district. Is not aware of any advantages to be derived from its continuance.

Its prevention might be effected by a simple enactment, making the practice illegal, and rendering the parties subject to a fine.

Furruckabad, Judge, Mr. H. Swetenham.

The practice is common. It obtained previously to the introduction of the British Government. It has prevailed probably to a greater extent since; the causes are perhaps the following: the prohibition against Europeans to hold lands, except under certain restrictions, under the provisions of Regulation XIX. of 1803; illegal acquisitions of landed property by ministerial government officers, to remedy which Regulation I. of 1821, and I. of 1823, were enacted; the heavy responsibility which attaches to landholders in matters of police. No advantages result from it. On proof in court that a sale of landed property had been effected in a fictitious name, for which good and satisfactory cause cannot be shown, the sale should be held liable to be annulled on repayment of the principal of the purchase-money, no interest being allowed.

Furruckabad, Magistrate.

No return.

Mynpooree, Judge, Mr. Begbie.

States that being unable to reply to the 1st and 2d queries of the Law Commissioners, he called upon the officiating collector (Mr. Tayler), to furnish the required information, copy of which he submits.

Does not agree with the officiating collector in thinking that the practice of holding lands in fictitious names to be decidedly objectionable, without any countervailing

countervailing advantages. It should be taken into consideration whether the facility afforded by the existing law to the real proprietors, of evading the registry of their names, be not in one respect advantageous to the State, by inducing capitalists to connect themselves with land, who would not do so, if they were made amenable to the personal processes issuing from the collector and the tushildars. Perhaps, by affixing a heavier penalty to fictitious registry, such persons would be altogether deterred from embarking their capital in land; and the evil created by the new enactment would do the State more injury eventually, than at present arises from the practice which it was intended to repress. Cites enactments by which persons are subject to certain penalties for purchasing lands at public sales in fictitious names, and for wilful omissions and misrepresentations regarding the succession to estates by private transfer; and these, coupled with the risk the real proprietor incurs of being fraudulently supplanted by the nominal, though registered malgoozar, are, he believes, sufficient to prevent the practice of fictitious registry becoming inconveniently prevalent; and it is also to be hoped, that if the practice originated, as stated by the officiating collector, in distrust of the ruling power, the greater confidence reposed by the landholders in the justice and clemency of the British Government will gradually induce them to abandon a custom for which a necessity no longer exists.

Mynpoorie, Officiating Magistrate and Collector, Mr. G. Tyler.

The practice was at one time prevalent, but from the inquiries he has made, it appears never to have been carried to any extent in his district, and is now seldom, if ever, resorted to.

The practice is undoubtedly objectionable in Malgoozarry estates. It continually causes much delay and inconvenience to the revenue officers, as they generally have to call upon a person without property, while the real defaulter evades and escapes all the disagreeabilities of undergoing duresse, or attachment of his effects.

The forfeiture of all lands held under fictitious names, would undoubtedly have the desired effect of stopping the practice; but perhaps such a measure may be considered too severe; however, after a certain period, the lawful owner should be made to register in his own name such lands as are now held in fictitious names, and in default, a heavy fine should be imposed.

Etawah, Judge, Mr. J. Davidson.

The practice would seem to be by no means common in this part of the country. Has observed it to exist but in two kinds of cases; in the one, the object is a just one, in the second, clearly fraudulent; the first being where a parent has purchased estates in the names of his children who are minors, with the intent that each estate become the property of the child in whose name it is bought; the second, where individuals involved in debt, in order to avoid the just claims of their creditors, transfer their estates, or purchase new ones in and by fictitious names. No case has come within his own experience of native officers of Government holding lands under fictitious names.

Conceives that in every case where the intent has been fraudulent, the estate so purchased or transferred, should be liable to forfeiture; and in cases where the object has not been a dishonest one, that the purchaser through a fictitious name should be subject to a fine proportionate to the real value of the property so purchased, which might at the same time be considered subject to all the legal liabilities.

Etawah, Magistrate, Mr. S. G. Smith.

Has no reason for supposing that any subordinate officer under his control, or any other individuals, hold landed property secretly or under feigned names in his district.

Allahabad Division, Officiating Commissioner, Mr. R. Lowther.

Believes the practice is chiefly resorted to for the fraudulent purpose of evading the eventual execution of decrees of court. In the Cawnpoor district, where the landholders have extensive dealings with the Muhajans, fictitious transfers are by no means uncommon. Understands that Isurfurzee holdings are by no means uncommon amongst the officers of the civil court. Is of opinion that the preventive law cannot be too strict, and would impose confiscation and dismissal from office as the penalty. Considers that a specific enactment only can operate as a check and a warning; believes the practice to have originated with our rule, and to have continued because it has never been interdicted.

Allahabad, Judge, Mr. Dunsmure.

Should say that the practice is not now common in his district. It did prevail to a great extent during the early part of our administration up to 1810, but since that period it has gradually declined.

The practice is not invested with much antiquity, as it started into existence shortly after the cession of the district. Many circumstances induced it; during the lax public administration which immediately followed the cession, the rapid acquisition of landed property by all connected with the fiscal management of the district, and more particularly by those who exercised a very pernicious influence over the executive officers, led the holders of estates to have recourse to the practice for the purpose of securing their possessions; another cause which operated, was the dislike of many to be subjected to the inconvenience of a system which involved the arrest of their persons. In the case of females being proprietors of estates, the practice did, and does now, almost invariably obtain. Again, individuals resort to it to defeat the just claims of their creditors.

There is not a single advantage in the practice; on the contrary, it encourages fraud and bad faith, for families have been beggared by the dishonest conduct of those in whose names estates have been registered, merely from a repugnance on the part of the real proprietors to appear as the Government malgoozars. Entirely agrees with those who recommend that all lands be declared liable to forfeiture, whether held by purchase or otherwise, under fictitious names.

Allahabad, Joint Magistrate. Mr. P. Morland.

The custom does not prevail to any large extent in his district, and might easily be checked altogether, by declaring by law that after a certain period such property should be forfeited to Government.

Cawnpore, Judge, Mr. C. F. Thompson.

The custom has prevailed in the Cawnpore district, since it was surrendered to the British Government by the Nuwab of Oude in 1803.

The circumstances which led to its introduction were these:

The native officers in the establishment of the collectorship, were prohibited from purchasing landed property at the Government sales by Section 9, Regulation XXVI. of 1803. These men, particularly the dewans and tuhseeldars, acquired large sums of money by fraud and extortion, and purchased estates sold by order of the collector, in the names of their relatives, connexions, or servants, or of imaginary persons, whose names were invented for the occasion, with a view to evade the provisions of Regulation XXVI. of 1803, and to obtain a lucrative investment for their money.

Native merchants have occasionally purchased landed property in the names of their gomastahs, or head servants, in order to avoid the inconvenience and annoyance of being apprehended by the tuhseeldars' chuprassees in the Mofussil, or the collectors at the sudder station, and the contingency of being summoned to attend, and detained in attendance at the magistrates' court, to answer complaints preferred by the Mofussil police, concerning want of co-operation, harbouring bad characters, &c. Natives of Oude, more particularly servants of the Oude Government, chukleedars, aumils, &c., who have acquired large sums of money by corrupt and oppressive means, have purchased landed property in this district, in the names of their relations or servants. Bankrupt merchants have done the same previous to a declaration of insolvency.

As to the advantages, native merchants who hold landed property in feigned names, derive some advantage from the continuance of the custom, as they are enabled to devote their time and attention to their private business, without fear of molestation from the collector, magistrate, and police. Should it be determined to prevent the practice by a regulation, the following provisions of law would effect the object in an efficient and equitable manner.

A general prohibition against acquiring landed property in feigned names, and a declaration making it unlawful for any person whatsoever to continue to hold land after the expiration of three calendar months, the penalty of a breach of the law to be a fine to Government, to be imposed by the civil court, at the suit of the collector, in a sum not exceeding six months' rent of the estate, and not less than three months.

Cawnpore, Officiating Magistrate, Mr. J. C. Wilson.

The practice is much more prevalent in Bengal and Behar than in these provinces. Knows of no instance of it amongst the officer at present attached to his court.

The

The practice originated from the hour at which these provinces were transferred by the Nuwaub Vizier to the British Government, and the prohibition consequent thereon against certain classes purchasing landed property; can safely assert that there are not only no advantages in the practice, but that it is vile in the extreme. Any person at the head of an office, who is aware that a certain estate is in the possession of a certain officer under him, can easily be on his guard against the illegal efforts made to favour it; whereas should the purchase, as is too often the case, have been made in a false name, his ignorance of the real purchaser may lead him into the wiles laid to deceive him. The best plan for putting a stop to the practice, would be an order to every owner of an estate, to avow himself within three months from a certain date, under a penalty of forfeiture; that in future any one should be allowed to purchase landed property, provided he bought it in his own name; the penalty of transgressing the order to be forfeiture of the estate.

Futtehpore, Judge, Mr. J. T. Rivaz.

Is not aware that any judicial officer of his court holds landed property under a fictitious name; only two advantages appear to him to accrue to a person who may hold landed property in such manner, viz. that creditors may be defrauded, and dishonest gains concealed; he is not aware of any honest advantages. A fine levied on the real and nominal proprietor, the fine on the former to be peremptorily levied on the landed property, and that on the latter on any property forthcoming, would, he has no doubt, effectually stop the practice.

Futtehpore, Magistrate, Mr. H. Armstrong.

The practice does not in the least prevail in his district; where it does exist, is of opinion that it should be put down by law, and the only provision which would most surely effect that object would be to render such tenures liable to forfeiture: has not been able to learn when the practice originated.

Bundlecund, Judge, Mr. S. Fraser.

There are five descriptions of persons who adopt the practice in the provinces under the jurisdiction of his court.

1. The Jageerdars of the neighbouring territory, who frequently hold lands in the name of their dependants, being unwilling to be brought individually into collision with the courts.
2. The natives of wealth and respectability, who object to appear in person in our courts.
3. Hindoos of all classes who hold lands in the name of different members of their family, wishing thereby to separate distinctly the property acquired by themselves from the joint claim of the other members of the family.
4. Subordinates of office who adopt the practice with a view to evade the orders of Government.
5. Persons not subordinates of office who similarly hold lands under fictitious names with a fraudulent intent.

The practice has apparently originated with the introduction of our courts, and legislation in regard to it, excepting in cases when it is resorted to for fraudulent purposes, should, he thinks, be adopted with great caution. Where fraudulent motives shall appear, sees no objection to declaring property held under fictitious names liable to forfeiture; nor does he perceive any other course by which an efficient check upon such proceedings can be exercised.

Banda, Officiating Magistrate, Mr. Donnithorne.

Believes the practice of holding landed property under fictitious names on the part of subordinate judicial officers, not common in these provinces, nor does he know any reason for concealment, as they (unlike revenue subordinate officers, by Section 14, Regulation XXV. of 1803,) are not prohibited by any law from holding lands in their own names.

Is not aware of any advantages or disadvantages to the public or the Government in the continuance of the practice as to subordinate officers of the criminal courts, nor indeed of the civil department, except as regards principal sudder ameens, sudder ameens, and moonsiffs.

To prevent the continuance of the practice, would recommend that the mere possession of lands situate within the jurisdiction of the office to which subordinate officers are attached, or their own jurisdiction in the case of sudder ameens and moonsiffs, in whosesoever name held, be considered a disqualification for office, unless such landed property clearly defined, had been specially allowed to be held; and in cases in which any deceit or concealment had been practised, either

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either at or after appointment, the offender should be subjected to fine and imprisonment, or only imprisonment, in the same manner, and to the same extent as for bribery or other malversation in office.

With respect to the holding of lands on the part of others than suborbinate judicial officers in fictitious names, believes the practice is very extensively prevalent. That it is coeval, or nearly so, with the present Government, and is in some degree caused by the proprietors being desirous of being free from all direct responsibility as to revenue and police. These are the advantages which they gain; and knows of no inconvenience or loss to Government or the community arising from the practice. Does not think it possible to prevent it by any enactment consistent with the justice and moderation for which the British Government has always been distinguished.

Humeerpore, Officiating Magistrate, Mr. T. Lean.

Gives 105 instances of estates supposed or known to be held in fictitious names in his district, and considers it probable there are many more.

Has no means of determining when the practice originated, but it appears to have been induced by the following causes:

The hope of avoiding the annoying responsibility in police matters which attaches to the registered proprietors, of avoiding attachment and sale of real and personal property, and imprisonment in the event of balance accruing; thus, in fact, making the estate alone answerable.

The wish of an independent chief taking an estate in farm, to avoid the indignity of having his name registered as malgoozar of another government. Can conceive no possible advantage in any one of the cases.

The law should provide that if all such fictitious tenures were not declared within a certain period to be given, the penalty of fine, attachment, or confiscation, should be incurred. No legal enactment appears necessary as regards farming tenures, as the collector making the settlement can always prevent, if he chooses, any such fictitious arrangements.

Benares Division, Commissioner, Mr. F. Currie.

Cases of persons holding land under fictitious names have very seldom come under his cognizance as commissioner of circuit, and then only in cases of dispossession under Regulation XV. of 1824; the origin of the practice in all which seems to have been the prohibition which hitherto existed to Europeans employed in the cultivation of indigo plants, &c. holding land in their own name. Has not discovered any inconvenience to police arrangements, or detriment to the interests of the State or individuals in the department of criminal justice, from the existence of the practice. Should it be deemed expedient to put a stop to the practice, imagines that it would only be necessary to declare it illegal, and that persons holding lands under fictitious names shall not be able to sue or defend suits relative to occupation, or forcible dispossession from such lands in the Foujdarry court.

Second Return submitted under the Court's orders.

The practice is not very prevalent, but exists to a certain extent.

Reply to Question 1.

Reply to Question 2.

Partly from rajahs and persons of rank and family considering it derogatory to them to have their names recorded as proprietors, and being desirous to avoid the personal process in case of balance of revenue, which the record of their names as proprietors would involve, and partly owing to the regulations heretofore in force, which prohibited Europeans holding lands in their own names.

Reply to Question 3. *Orig.*

None; but in the case of rajahs and others, it is unobjectionable, as the estate is, or ought to be, sufficient for its revenue.

Reply to Question 4.

As above, generally in all courts.

Benares, Judge, Mr. G. Mainwaring.

Is led to believe that the practice is very common within the jurisdiction of his court; it has always been the case, and he is informed that the practice prevailed previously to the acquisition of the province by the British Government; the present inducement to the practice is frequently of a fraudulent nature; viz. that by such property being purchased and held in the name of a servant or dependant relation, it may be exempted from the grasp of creditors. Many estates, too, have been purchased, or are held under fictitious names, by the class of natives prohibited from becoming landholders by Sec. 15, Reg. V. 1795. Is not aware that any advantages can accrue to Government by

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by the continuance of a practice at once illegal, and of a fraudulent tendency. Is not prepared to specify any rule that would effectually put a stop to the practice.

Benares, Magistrate, Mr. D. B. Morrieson.

The practice is not common in this part of the country. It is, however, not uncommon for such property to be held in the name of other persons than the real owners, though such persons are not fictitious, but existent; a son, a brother, or relative of any kind; and frequently a gomastah is the apparent or recorded proprietor, while the real one keeps himself behind the scene.

It is an old practice, and he believes originated when the country was in an unsettled state, with no permanent government, or one which had neither the confidence nor the good wishes of the community; the custom once having taken root, there will be difficulty in overcoming it; but is of opinion that it is on the decline. There are no advantages attending the practice; on the contrary, it enables fraudulent persons to cheat with greater ease, and to set both their creditors and the law at defiance. It is desirable, therefore, that the practice should be put a stop to, though cannot see how any special enactment can be of any avail; thinks the practice will decline of itself; and in proportion as the respect and consideration attending on the possession of landed property shall increase, the less inducement there will be for concealing the name of the real proprietor.

Goruckpore, Judge, Mr. W. B. Jackson.

The practice is common at Goruckpore, but not so much so as in other parts of India where he has been employed, Behar and Allahabad for instance. The object in using a fictitious name is undoubtedly concealment. During the native governments the practice was very unfrequent, although, as every rich man was liable to extortion in proportion to his riches, it was his object to conceal the extent of his property as far as possible; the same object now exists with regard to native officers of Government, or others who have obtained property in an illegal manner, and are desirous to conceal the acquisitions from Government.

Knows of no advantages at present in allowing such a practice to exist, excepting the convenience of making settlements of property or gifts, the object of concealing ill-gotten wealth is not a legitimate one, and the sooner the means of doing so are removed the better. Sees no sufficient reason for allowing the practice to continue, and would fix a day, after which no purchases made in fictitious names should be valid; looks on the practice as conducive to the concealment of fraud.

Goruckpore, Magistrate, Mr. E. A. Reade.

Does not think the practice so common in his zillah as in other districts in these provinces; the practice is resorted to for concealment's sake, but it has obtained from other motives; does not see any advantage from the practice, except that it may have the effect of stopping litigation. No other provision of law appears requisite than the introduction of a rule that all those persons, servants of the state, or others, who acquire by gift, &c. properties, whether for a limited term, or permanently, have the opportunity of registering the name of whom they please, but at the time of registering must record the acquisition, by whom made, either in person or by attorney.

Azimgurh, Officiating Judge, Mr. A. C. Heyland.

The practice is by no means so common in his district as in most others; in fact, since the late settlement, when the name of each landed proprietor was so prominently brought forward, and since the late Act, allowing British subjects to hold lands in their own names, there are but very few instances remaining.

Conceives there cannot be any public advantage from persons holding their lands under fictitious names; and the prohibiting such practice would give general satisfaction. The private advantages are all of a fraudulent nature, except as regards the higher natives.

Conceives there would be no injustice in declaring the practice in future illegal, and, in the event of its being brought to the notice of the collector, that such land will be liable to confiscation, and the holder, if in the employ of Government, dismissed.

Azimgurh, Officiating Magistrate, Mr. R. Montgomery.

The practice of holding landed property, sold in execution of decrees of court, under fictitious names, was more common during the time British subjects were prohibited from holding lands is their own names than it now is; the practice now chiefly prevails amongst the native omlah and their relatives, but

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but it is not common, and where it does exist, it is chiefly with regard to lands sold in execution of decrees of court. The practice originated with the framing of the different Regulations prohibiting the native omlah from purchasing estates, sold for arrears of revenue; but this appears to be a mistaken idea as regards sales in execution of decrees of court, which do not appear to be prohibited. No advantages result from it; on the contrary, it often leads to a great deal of litigation afterwards. Thinks the best preventive would be to pass a law declaring that the person in whose name the estate was purchased, should be acknowledged as the proprietor, in case of any litigation on the subject.

Jaunpore, Judge, Mr. D. B. Morrieson.

Refers to the opinion given by him as collector and magistrate of Benares.

Jaunpore, Magistrate, Mr. C. R. Tulloh.

The practice exists in his district, but to what extent it is not possible for him to say, but does not think to any great extent; it was much more common prior to the Act authorising Europeans to hold lands.

Cannot say when the practice originated, or what were the circumstances which induced it.

Is not aware what advantages accrue from the continuance of the practice.

It is difficult to determine on the best measure for preventing it; but on the whole, considers forfeiture of the land, and a heavy fine imposed on the person in whose name it was purchased, would, in a great degree, put a stop to the practice.

Mirzapoor, Judge, Mr. H. H. Thomas.

Has no reason to suppose that the practice is less common in the district of Mirzapoor than in other parts of British India. It would be difficult to state with accuracy when it originated, but it may be traced up to the time of Mr. Jonathan Duncan's settlement, and is informed that it prevails even under the native governments; the main object is deception. Cannot call to mind the slightest advantage which this extensively mischievous practice possesses; on the contrary, the total abolition appears more likely to lead to most wholesome and beneficial results. The provisions of the law for preventing it should affect not only the native officers of Government, but all persons whatever; and forfeiture should be declared the penalty of its infringement.

Mirzapoor, Magistrate, Mr. Woodcock

The practice is as common in his district as in any other; the custom has arisen in several ways; 1st. Servants of Government have made purchases, and held land or other tenures (which they are not allowed to do by the Regulations of Government,) in the names of their relations and servants, who alone can be acknowledged as the ostensible proprietors; 2d. Persons of rank and wealth, who would object to appear before the several courts on various occasions, hold estates in the names of their servants in order to avoid such inconvenient personal calls; 3d. Purchases are also made at the Government sales, in fictitious names, on the part of the defaulting proprietors of estates, and hence ensues a variety of roguery and litigation. There can be no real advantage or convenience in the continuance of the practice, since parties can quite as well send their mooktear or vakeels to the courts. A positive prohibition and forfeiture of all right and title to the estate, on proof such estate being held in a fictitious name, would prevent the continuance of the practice, which appears highly objectionable.

Ghazeepore, Judge, Mr. J. P. Smith.

Reply to Question 1. The word fictitious, as applied generally to transfers of landed property, admits of two constructions, which must be separately considered:—

First. If, by fictitious, we are to understand imaginary or absolutely non-existent, then I apprehend the practice of purchasing and holding landed property in a name without an owner, is of very rare occurrence, for obvious reasons.

But, secondly, taking the word in its other sense, of false or not genuine, as for instance, when a feigned name, *i. e.* the name of a person possessing no interest or right in the matter, is purposely substituted in lieu of that of the real party to a transaction; the practice adverted to is known to be very prevalent, in public as well as in private transfers of real property. There is, however, a third description of sale, by no means uncommon in this province; differing, indeed, essentially from both the foregoing, but still liable, from its resemblance, to be confounded with them; I mean the purchase of land in the name

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name of a son or relative, during the purchaser's lifetime, for his or their exclusive benefit or otherwise, as the case may be; but avowedly and openly made, without any attempt at concealment. Transactions of this character, though not embraced in the inquiries of the Law Commission, appear deserving of notice, as intimately connected with the general question of modifying the law.

Reply to Question 2. In regard to the origin and causes which led to the adoption of the practice in question, there is little doubt that under the native governments of India it was by no means so common as under our rule; and for this simple reason, among others, that in those times, when might was right, and the end was considered to justify the means, the mere cloak of a dependant's name appearing on the rent-roll could afford to the real proprietor little or no protection against the tax-gatherer's coercive measures. Their operation was generally brought to bear upon the *bonâ fide* possessor of the property, or such of his connexions as might happen to fall into the great man's power, without much attention to names and records; thus defeating the main object of concealment.

A mode of proceeding so arbitrary and off-hand did not, however, square with English notions of justice and good policy, and consequently, the introduction of our rule gave birth to a new system, the main principle of which was, to recognise as the real proprietor the person ostensibly borne upon the record; and accordingly the law, in its anxiety for the liberty of the subject, ensures exemption from coercive process to every one, save the party actually under engagements to Government, even in cases when the fact of private connexion or partnership may be a matter of notoriety. The same reasoning applies with equal force to the landholders' obligations and liabilities in regard to matters of police, and the maintenance of public order. The mere chance of being required to appear in person before a court of justice, to answer for the misdeeds of agents or dependants, the being subject to the caprice and demands of the local police officer on every trifling occasion of real or pretended disturbance, to say nothing of other annoyances incident to the possession of wealth and station in a country where discretion has so wide a range, and the well-being of society depends so much upon the personal character of the man in authority, are, with the native of rank, considerations quite sufficient to account for the frequent resort to the practice under discussion; and so long as prejudice maintains its sway, and public spirit is at so low an ebb, they will continue to produce a similar result, unless put down by law. The mainspring, however, of this mischievous system, may be traced to the causes so fully detailed in the preamble of Regulation I. 1821; a state of things which naturally resulted from the great power and confidence reposed in Government native officers on the one hand, combined with the ignorance of the owners of the soil on the other. It is a well-known fact, that no zillah in the province of Benares is without its two or three great families, wealthy, powerful, and according to native notions, respectable; whose history, if inquired into, would show how much they were indebted for the acquisition of their property, to undue influence and intrigue.

Reply to Question 3. Namely, what are the advantages to be expected from a continuation of the practice? I am of opinion, that like a monopoly, the benefits are all on the side of the few, at the expense of the many; and, moreover, that those benefits are highly pernicious in their effects upon the welfare of the community at large, by being, in many cases, perverted into a licence for the perpetration of fraud and dishonesty with impunity to the designing rogue, and to the injury and prejudice only of the ignorant and unsuspecting. Thus, for instance, the fraudulent debtor takes advantage of this facility of substituting one name for another in the documents and title-deeds which he has occasion to bring into court, to evade all risk of personal inconvenience arising from arrest and imprisonment; while it is no unusual thing, in public sales, in execution of decrees, for a defendant to hire a man of straw, willing, for a trifle, to incur the penalty of a month's imprisonment awarded by law for failure in making good the purchase-money, merely for the purpose of delaying the sale. This is a device which has more than once been successfully practised in my own experience, and, according to my idea, affords a strong argument in favour of imposing some more severe legal penalty than at present exists. In a word, I consider the practice in question not only wholly indefensible, but attended

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attended in its practical results with unmixed evil, both as regards the interests of the State, and the welfare of society; and I am confident that the interference of the Legislature to check its further progress, would be hailed with joy by the great majority of the people.

Reply to Question 4. In the event of its being determined to prohibit the practice, I do not see how the object could be more effectually and conveniently attained, than by the enactment of a law rendering all lands liable to forfeiture which may hereafter be purchased under fictitious names by any parties, whether native officers of Government or others; and also requiring all parties at present holding landed property under fictitious names to appear before the collector within a specified period (say six months), and give in a true and faithful statement of the *bonâ fide* proprietor's name and condition, under the penalty of forfeiting all right and title to any property so illegally held subsequent to, and in contravention of the said law.

I would not, however, advocate any legislative interference whatever with the liberty of any person to dispose of his property, or make purchases in the name or names of his sons, or near relatives, provided the act was free from concealment and disguise.

Ghazeepore, Officiating Magistrate, Mr. W. Hunter.

Believes the practice to be common in his district. It is difficult to say when it originated, but considers the circumstances which must have chiefly led to induce it to have been the acquisition of large sums of money by improper means, and a desire to lay it out advantageously in the purchase of landed property without the offenders exposing themselves. Knows of no measure which could be taken to prevent it, besides that of rendering land acquired by such means liable to forfeiture; fears, however, that even this would not prove effectual.

Saugor and Nerbudda Territories.

The practice does not obtain in these territories where the proprietary right in the soil has been pronounced to reside in the Government.

(signed) *H. B. Harington*, Register.

Legis. Cons. 23 Nov. 1840. No. 15. Enclosure.

EXTRACT from the Proceedings of the Sudder Adawlut, under date the 27th June 1838.

READ letter from the Officiating Secretary to the Indian Law Commission, dated 30th June 1837, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others.

Also read letters, dated respectively the 25th October and 4th November 1837, and 10th May 1838, from the Provincial Court in the western division, submitting their own, and the opinion of the several judicial officers subordinate to them, touching the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

Also read letters, dated respectively the 23d October 1837, 28th February and 21st March 1838, from the Provincial Courts in the northern, southern, and centre divisions, submitting their own sentiments, and the opinion of the several subordinate judicial authorities in those divisions, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

1st. In the letter from the Indian Law Commission above recorded, the Commissioners observe, that they are fully impressed with the inconveniences which result from the common Indian practice of purchasing and holding property in fictitious names, but that they feel it would be unsafe to make a general change in the existing law on so important a point, without a further knowledge than they now possess of the circumstances under which the practice has sprung up in every part of India, and accordingly, they have requested information on the following points.

First. Whether the practice of holding landed property under fictitious names is common in the provinces under the jurisdiction of this court?

2d. From the communication addressed to the Court of Sudder Adawlut by the

the local judicial officers, it would appear that the practice is very common in the southern and western divisions, comprising the districts of Tinnevelly, Madura, Tanjore, Trichinopoly, Salem, Coimbatore, Malabar, and Canara. In the northern division, however, the practice is said to exist only in the zillah of Chicacole, and in the centre division. It is reported to be common in the zillah of Cuddapah, and to exist to a limited extent in the district of Cuddalore, but not to be known in any other zillah within the centre division.

3d. The experience, however, of the Court of Sudder Adawlut leads them to believe, that the practice of purchasing or registering lands in fictitious names is resorted to more or less in every zillah included within the jurisdiction of the Provincial Courts in the northern and centre divisions; and entertaining this opinion, the court are required to report.

Secondly. When that practice originated, and what were the circumstances that induced it?

4th. The particular period at which the practice may have commenced is not known, but almost all the judicial officers in the provinces concur in opinion that it has been partly induced by the prohibition contained in Regulation XXVI. of 1802, against native officers of the collectors' cutcherries, or the collectors' private servants becoming purchasers of lands sold at public sales in the zillahs in which they may be respectively employed; also by a desire to evade the provisions of the Hindoo and Mahomedan local laws of inheritance, and by a hope thereby to conceal such property from creditors; and in the western division, it is said to be induced also by the superstitious ideas entertained by the natives of that coast, as to the better luck of individuals of a family whose names are consequently set forth as purchasers; also to prevent inconvenience to parties purchasing land, who may be unable personally to attend, and to go through the peculiar forms of sale observed in Malabar. But there is no doubt that it is also extensively practised, in order, if an arrear of revenue should occur, to prevent the issue of revenue process against the real owner.

5th. The third point on which information is required, is as to whether there are "any advantages in the continuance of that practice, and if there be, what are those advantages?"

6th. The only advantages that individuals derive from the practice, are those specified in the latter part of the answer to the preceding question; but while it is shown that no advantages of importance are derivable from the continuance of the practice, the local authorities have almost unanimously agreed that many and great are the evils which the system of purchasing lands in fictitious names has given rise to; and of the inconveniences resulting from the practice, the Law Commissioners state they are fully impressed.

7th. In the event therefore, of its being determined to prevent the continuance of the practice, the Indian Law Commission are desirous, in the fourth place, of being informed what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

8th. In the opinion of the Court of Sudder Adawlut, the continuance of the system would be effectually put a stop to by the enactment of a law to the effect, that all sales of land shall be registered, and no sale of land by public officers be allowed, excepting through the collector of the district.

9th. That for this purpose an office or offices of general registry shall be established in each collectorate; and that whenever lands are sold, mortgaged, or otherwise alienated by a written deed, such deed shall not be admitted in any court of justice or elsewhere as valid, unless it has been registered.

10th. That the execution of deeds for the sale, mortgages, or other alienation of land in fictitious names, shall be declared illegal, and that such deeds, whether registered or not, shall be deemed invalid and inadmissible in any court of justice or elsewhere.

11th. That persons holding lands, whether in their own names, or in the names of others at the time of the promulgation of the enactment, shall be required to register their title deeds within a prescribed period, and that on its expiration, deeds for land not so registered, shall not be admissible in any court of justice or elsewhere.

12th. That pottahs and muchilkars for the mere cultivation of lands for any period under three years shall not be required to be registered.

13th. On the subject of the expediency of establishing an office of general registry,

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registry, the court of Sudder Udalut have lately taken occasion to address the Government of this Presidency, and the judges have suggested that a copy of those papers be furnished to the Supreme Government, in view to their consideration by the Law Commission.

Ordered, that extract from these proceedings, together with copies of the papers recorded above, be forwarded to the Secretary to the Indian Law Commission.

(True extract.)

(signed) *W. Douglas,* Register.

(No. 376.)

Legis. Cons. 23 Nov. 1840. No. 16. Enclosure.

From *G. J. Beauchamp,* Esq. Register N. P. Court, to the Register to the Court of Sudder Adawlut.

Sir,

I AM directed by the Northern Provincial Court, with reference to your letter of the 8th of August, "transmitting a copy of a communication from the Secretary to the Law Commission, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others, and requesting that the court will submit their own sentiments, and those of the several zillah and assistant judges within the jurisdiction, on the four points proposed for consideration," to submit the enclosed reports received from the several judicial officers within the northern division, and to state that the officiating third judge, the only judge present at the station, has the same opinion as Mr. Thomas, the judge of Masulipatam, as to the motives which led to the practice of purchasing lands under fictitious names. This practice appears to the acting third judge highly objectionable, inasmuch as it has the tendency of rather encouraging the temptation to prejudice public interests, than being productive of security, or any other legal advantage, and ought in consequence to be materially checked.

2. The measure by which this object can be met, would be, in the acting third judge's opinion, to make it a general rule that all purchases of a similar nature, under any circumstances whatever, will on detection be nullified, and the landed estate forfeited, and the persons guilty of the fraud, or of being concerned in the collusion, visited with a pecuniary penalty, adequate to the rank in life of the party and circumstances of each case.

3. The suit on the Provincial Court's file alluded to by Mr. Rohde, cannot, in its present state of uncertainty, be a criterion on which to form an opinion; but there are, however, reasons to doubt if the fraudulent procedure now in agitation has not been resorted to in that case to the end of depriving a brother of his share of patrimonial property.

I have, &c.

Masulipatam, N. P. C. Register's Office, 23 October 1837.

(signed) *G. J. Beauchamp,* Register.

RETURN from the Acting Judge of Chicacole to Precept No. 1038.

THE acting Judge has the honour to acknowledge the receipt of the foregoing precept, transmitting certain interrogatories proposed by the Indian Law Commissioners, on the expediency of rendering all lands liable to forfeiture which have been purchased by any parties, whether native officers of Government or others, and herewith transmits his sentiments upon the four points therein proposed.

Given &c. at Chicacole, 30 August 1837.

(signed) *A. Freese,* Acting Judge.

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Q. 1st. Is the practice of holding landed property under fictitious names, common in the provinces under the jurisdiction of your court?

2d. If so, when did that practice originate, and what were the circumstances that induced it?

A. The practice of holding lands under fictitious names, is common in the provinces under the jurisdiction of this court. The practice of holding lands under fictitious names has existed for many years, and I believe to have originated in two causes:—

1. From the desire of native servants to conceal from the authorities, the circumstance of their having obtained possession of lands.

2. To defeat the ends of justice and prevent the execution of the decrees of the courts. With regard to the first of these reasons, I have seen many instances of its having occurred, not only in this part of the country, but in the ceded districts, and it may perhaps be acceptable to point out the mode in which it was done in one instance that came to my knowledge. In the ceded districts a remission of 25 per cent. upon the survey assessment by Colonel Munro, is granted upon all dry land, but should the owner convert the dry land into gardens by constructing wells, no additional tax is levied, though the remission is not granted; such lands, therefore, become very valuable, and in the instance I allude to, a native tehsildar contrived, through his influence, to make many of the owners resign the dry lands they had converted into gardens, to him in reality, but nominally to men who were his agents and relations. Native public servants are prohibited by Sec. 20, Regulation XXVI. of 1802, purchasing lands sold at public sales in the zillahs in which they may be respectively employed, but there is nothing in the Regulations to prevent their obtaining lands by private bargains in their own or others' names, provided the land at the time is not liable to public sale for arrears of revenue.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I can see no real advantage in the continuance of the practice, though the interference with it might be deemed too great an inquisition into the private affairs of individuals.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

Should it be determined to interfere with the continuance of the practice, I consider the only method would be to compel the registration of all sales, either in the office of the collector or in the courts, and which registration should be extended to mortgages, and certainly to mortgages without usufruct, as it is by such fictitious mortgage bonds the ends of justice are chiefly evaded.

(signed) *A. Freese,* Acting Judge.

RETURN from the Acting Assistant Judge of Vizagapatam to Precept No. 1039.

IN conformity to the orders contained in the extract of proceedings which accompanied this precept, and which directed the several officers to whom it was addressed, to state, 1st, Whether the holding lands under fictitious names, is common within their jurisdiction? 2dly, If so, how the practice originated? 3dly, What advantages have arisen therefrom? and 4thly, What would be the best mode of checking this practice?

The acting assistant judge begs to state that he concludes the practice is not unknown, but that any information he could give on the subject would not be derived from any official source, as he does not remember any instance being proved before him; that besides the collector of this district having, he believes, been addressed on the subject by the Board of Revenue, his information will comprise

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comprise all that can be stated on this head, on which the acting assistant judge does not consider himself able to offer anything further than vague suggestions, not founded on experience; he, however, begs to state from hearsay, that he believes it is not improbable a reference to the case No. 54 of 1828, Provincial Court's file may throw some light on the subject.

Given, &c. at Vizagapatam, 2 September 1837.

(L. S.) (signed) *J. Rohde,*
Actg Assistt Judge.

RETURN from the Zillah Judge of Rajahmundry to Precept No. 1040. Masulipatam Zillah Court of Adawlut.

(L. S.)

1. THE Judge has the honour to acknowledge the receipt, on the 21st ultimo, of the orders contained in the precept under date 14th ultimo, accompanied by extract from the proceedings of the Provincial Court of Appeal for the northern division, with instructions to submit his sentiments upon the four points proposed in a communication from the Officiating Secretary to the Indian Law Commission on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

2. He begs to state, in reply to the first point, that from inquiries which he has been enabled to make, it would appear that the practice has obtained in this zillah of holding lands under fictitious names, and to some extent.

3. On the second point, that it originated at a period antecedent to the establishment of the courts of Adawlut, but has probably increased in consequence of the orders and Regulations which have been promulgated, whereby the officers of Government in the Revenue Department are prohibited from purchasing lands sold in satisfaction of arrears of revenue, as provided for in Regulation XXVI. of 1802, and the circumstances which have led to the practice in question, may be stated to be the general feeling of insecurity under which the natives of this country have lived, and which has occasioned many to shrink from the appearance of possessing much landed or other property, as well also from the necessity felt by many of them to resort to methods to defeat the unwise provisions of their own laws, which direct the equal distribution of property amongst the heirs of the deceased; another reason has also been assigned in inducing natives to resort to this practice, viz. that it enables them to become possessed of property by purchase from their own immediate relations, rather than assist them with the means of retaining the same, which, by general concurrence, it is supposed relatives should be prompt to do for each other; also in the event of a decree of a court being against them, or demands of whatever nature, that their property may not be liable to attachment for the same, they hold it under a fictitious name; such are the most prominent circumstances and causes which have led to the practice in this zillah.

4. On the third point, namely, that the motive to resort to this practice is strong, and the advantages many, must be inferred from its having been persisted in, notwithstanding the serious losses to which many subject themselves by assigning their property over to the will of those in whom they often find they have misplaced their confidence, as well also from the practice having continued, notwithstanding the provisions of Sec. 17, Regulation XXVI. of 1802, which enacts, "that all lands purchased at public sales under fictitious names, shall, on proof before the Udawlut courts, be liable to forfeiture at the pleasure of the Governor in Council;" he is not aware of any other advantages attending this practice than those already stated.

5. With reference to the fourth point he would observe, that in case of its being determined to prevent the continuance of the practice, it will be necessary to enact a Regulation declaring all lands purchased and registered under fictitious names to be the property of Government.

Given, &c. at Rajahmundry, 8th September 1837.

(signed) *James Thomas,* Judge.

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Return from the Acting Assistant Judge of Guntoor to Precept No. 1043.

The acting assistant judge has the honour to acknowledge the receipt of the foregoing precept, forwarding an extract of proceedings of the same date, and a copy of a letter from the Officiating Secretary to the Indian Law Commission, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names, whether by native officers or others, and requesting the opinions of the several zillah and assistant judges on four questions, to which the acting assistant judge has the honour to reply as follows:

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

As far as the acting assistant judge has been able to learn, the practice does not prevail to any great extent in this zillah, and he does not know of any suit in this court in which it has appeared that such a circumstance has occurred.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

It is probable that whenever lands have been held under fictitious names, it has originated in the prohibition against public servants purchasing lands at sales, under Regulation XXVI. of 1802, and Regulation VII. of 1832, and from the desire of concealing such property from creditors or co-partners.

3d. Are there any advantages in the continuance of that practice; and if there be, what are those advantages?

The acting assistant judge does not know of any advantage whatever in the practice, and thinks that any measures calculated to prevent it would be extremely salutary.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

No cases of this nature having ever come before the acting assistant judge, he feels himself incompetent to state what provisions of law would most surely and conveniently accomplish the end proposed. Declaring all lands so held liable to forfeiture to Government, with a proviso, that where it may appear to have been done for the purpose of defrauding any person or persons of their just rights, those rights would invariably be held inviolate, would be the best means of preventing the practice which the acting assistant judge is aware of.

Given, &c. at Guntoor, 14 September 1837.

(signed) *E. Newberry,*
(L. S.) Acting Assistant Judge.

Return from the Acting Assistant Judge of Masulipatam to Precept No. 1041.

(L. S.) Masulipatam Zillah Auxiliary Court.

In return to the foregoing precept, forwarding copy of a letter to the Register of the court of Sudder and Foujdarry Adawlut, from the Officiating Secretary to the Indian Law Commission, dated the 30th June 1837, directing the acting assistant judge to submit his opinion on the four points therein proposed, regarding the forfeiture of all lands which have been purchased under fictitious names by any parties, whether native officers of Government or others, the acting assistant judge has the honour to forward copy of a letter with an enclosure received in answer to one addressed to the collector of Masulipatam from this court, from which it appears that the custom of purchasing lands under fictitious names does not obtain in this zillah; and, in consequence, the acting assistant judge does not offer any opinion on the subject.

Given, &c. at Masulipatam, 10 October 1837.

(signed) *R. Davidson,*
Acting Assistant Judge.

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From *J. C. Wroughton*, Esq. Collector, Masulipatam, to the Acting Assistant Judge in the Zillah of Masulipatam.

Sir,

With reference to your letter of the 26th ultimo, calling for information relative to the practice of holding lands in this district in fictitious names, I have the honour to forward copy of my letter on the subject to the Board of Revenue, under date 19th August last.

I have, &c.

Masulipatam Zillah Collector's Circuit, Cutcherry Chullapully, 5 October 1837.

(signed) *J. C. Wroughton*, Collector.

(No. 87.)

From *J. C. Wroughton*, Esq. Collector, Masulipatam, to the President and Members of the Board of Revenue, Fort St. George.

Gentlemen,

With reference to your Board's proceedings of the 24th ultimo, forwarding copy of a communication from the Secretary to the Indian Law Commissioners, on the question of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names, and directing me to state whether the practice alluded to exists in this district, I have the honour to state, that from a reference to the records of my office, and the inquiries I have made on the subject, it does not appear that an instance of the kind is traceable. In the event of such cases occurring, the provisions of Regulation XXVI. 1802, of the Madras code, render such lands liable to forfeiture by Government.

I have, &c.

Masulipatam, Collector's Cutcherry, 19 August 1837.

(signed) *J. C. Wroughton*, Collector.

Return from the Zillah Judge of Nellore to Precept No. 1042.

The Judge in the zillah of Nellore has the honour to acknowledge the receipt of this precept, which accompanied an extract from the proceedings of the Provincial Court of Appeal, Northern Division, dated 14th August last, together with a copy of a letter from the Officiating Secretary to the Indian Law Commission to the Register to the Court of Sudder and Foujdarry Adawlut, under date the 30th June last, requiring opinions on certain points regarding the purchasing and holding of landed property under fictitious names; and begs to state, that from inquiry which has been made into the records of this office, it does not appear that such practice exists in this zillah; but it appears that ryots are sometimes in the habit of procuring from the collector pottahs in the names of their friends, relations, or dependants, for the circar aumany lands, but it does not appear that they do so with any fraudulent intent. The continuance of this practice may tend to increase the cultivation of circar aumany lands; but when lands of any description are held under false names, with a fraudulent intention to injure the legal sharers in the property, or occasion a loss to Government, it is of course indispensable that the continuance of such practice should be prevented; and the Judge is of opinion that the object could be effected by fixing a certain period of time for the individuals holding landed property under fictitious names to have their actual names entered in the registry in the collector's cutcherry.

Given, &c. at Nellore, 17 October 1837.

(L. S.) (signed) *R. Grant*, Judge.

RETURN from the Zillah Judge of Nellore to Precept No. 1267.

THE Judge in the zillah of Nellore has the honour to acknowledge the receipt of this precept, which accompanied an extract from the proceedings of the Provincial Court of Appeal, northern division, under date the 11th instant, requiring to submit the return to this precept of the 14th August last, calling for his opinion upon certain questions as regards the purchase of land in fictitious names, and begs to state that the return to the precept has been to-day.

Given, &c. at Nellore, 17 October 1837.

(L. S.) (signed) *R. Grant*, Judge.

(True copies.)

(signed) *W. Douglas*, Register.

From *H. A. Brett*, Esq. Register, Chittoor Provincial Court of Appeal, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

WITH reference to your letter dated the 8th August 1837, I am directed by the Centre Provincial Court to transmit copies of returns from the several zillah and assistant judges in the centre division to this court's precept, dated the 12th of the same month, submitting their sentiments on the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

The Court have reason for believing that the practice of holding landed property under fictitious names does exist within the centre division, and this opinion is borne out by the return of the zillah Judge of Cuddapah, as well as from the circumstances of Chinatumby Moodelly having, in O. S., No. XVIII. of 1829, sued one Septen Lazar, *alias* Chamier, in the Supreme Court, and obtained a decree in his favour, when the villages of Noombul and Pooliambut were sold by public auction in execution of their decree, and when the aforesaid Chinatumby Moodelly caused these two villages to be purchased for him by and in the name of his friend, Colah Ragava Chitty; the assignable cause for this deceptive purchase was, that as Chinatumby Moodelly was himself a party to the suit, he must have conceived that the purchase was not legal under the provisions of Regulation XXVII. A. D. 1802.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

The practice is supposed to have originated some short time after the promulgation of Regulations XXVI. and XXVII. A. D. 1802, which prohibited the purchase of lands as well by public officers as by parties in the suits. Nothing is more common than fictitious transfer of property, and nothing more baneful to the due administration of justice than this growing evil, which is now invariably pleaded in bar of execution of the process of the civil courts.

3d. Are there any advantages in the continuance of that practice; and if there be, what are those advantages?

It appears that the greatest objections exist to this practice of deception, while no possible advantage can result from its continuance.

4th. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

It should be within six months declared, that from and after the promulgation of the Regulation, prohibiting the holding of lands under fictitious names, that all lands so entered in the sircar accounts should be transferred to the names of the real proprietors; that

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that in failure of the parties attending to this provision, it should be at the option of individuals to bring to the notice of the collector such infringement of the Regulation, who should, if after an investigation of the charge see grounds for crediting the information, sue the parties in the civil courts; while a provision should be enacted, by which the courts should be authorised to declare all lands held under fictitious names as having escheated to Government, with further authority to fine the party aiding the deception, in a sum equal to a moiety of the value of land recovered, to be credited to Government; it should further be competent to the Court to award to the party first giving notice to the collector, 10 per cent. of the actual value of the property awarded to the Government; curnums or tehsildars should be required to register all divisions of estates which take place within his division, and each curnum should register every mortgage of landed as well as personal property in each year. These registers should be sent every six months to the collector's office, and then copied in a register to be kept for the purpose, and the original record returned to the village: a small fee might be allowed for the registering of each mortgage.

The number, date, and names of the mortgages and mortgagee should be entered in the register, as well as the quantity and description of the land mortgaged, likewise the nature and value of the personal property; the village and district in which it is situated should be also noticed, as well as the conditions of the mortgage, and the amount borrowed on that security.

The returns made by Mr. Paternoster and Mr. Baynes appear to contain more correct opinions on the subject than those furnished from any of the other judges within this division.

The Court would have transmitted the returns relating to the above question at an earlier date, but they were detained till the arrival of the acting second Judge, Mr. Lewin, who it now appears has already submitted his opinion on the subject, while conducting the duties of principal collector of Canara. Mr. Lewin begs that the opinion he then expressed may be referred to for the present occasion.

I have, &c.

Chittoor Civil Provincial Court of Appeal, Register's Office, 21 March 1838.

(signed) *H. A. Brett,* Register.

From *F. Lascelles*, Esq. Judge, to the Register to the Provincial Court of Appeal, Centre Division, Chittoor, dated the 16th November 1837.

Sir,

In return to the annexed precept which accompanied an extract from the proceedings of the Provincial Court of Appeal for the centre division, under date the 12th, received on the 23d August last, forwarding copies of two letters, one from the Register of the Sudder Adawlut, dated the 8th of the same month, and the other from the Officiating Secretary to the Indian Law Commission, dated the 30th of June last, annexing four questions on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others, with directions to submit the opinions of the zillah Judge thereon. The zillah Judge has the honour in reply to state as follows:

1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

It does not appear to be customary to hold lands under fictitious names; no instance of the kind having ever been brought to the attention of the zillah Judge.

2. If so, when did that practice originate, and what were the circumstances that induced it?

Answered.

3. Are

The

3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?	The zillah Judge can perceive little advantage to be derived from such a practice, for if the attempt was made for any sinister purpose, it would be very soon discovered.
4. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?	Forfeiture of the land when discovered to be held under a fictitious name, would most probably prevent the practice where it does exist.

Given under my hand and the seal of the Court, this 16th day of November A. D. 1837.

(L. S.) (signed) *F. Lascelles,* Judge.

In return to the above precept, directing the zillah Judge of Cuddapah to furnish information respecting the custom of holding lands under fictitious names, the zillah Judge begs leave to state, that in consequence of his having been but a short time in this district, he has not been able to obtain such full information on the subject as he wished.

The practice of holding lands under fictitious names in this district, is certainly, so far as the zillah Judge has been able to ascertain, carried to a great extent. It is, however, exceedingly difficult to obtain correct information on the point, as those persons who from their situations would be the most able to furnish the information, are the most interested in concealing the fact.

It does not appear, from the inquiries which I have made, that the practice existed to any considerable extent, if at all, previous to this district coming under the British Government. Landed property under fictitious names, appears to be held in this district principally by persons holding situations under the Government: although Regulation XXVII. of 1802 applies only to land sold at public sales for arrears of revenue, a great quantity of land is purchased by native revenue officers, and also by other public servants by private bargain, under fictitious names, or more properly speaking, in the names of other persons, near relatives of the actual purchasers. Persons holding public situations, particularly in the Revenue Department, have numerous opportunities of acquiring the best land on the most favourable terms; the reason of land being held in fictitious names under these circumstances, is sufficiently obvious.

Land property is sometimes purchased, and occasionally to a considerable extent, by private individuals in other names, chiefly to obviate its liability for the debts of the purchasers. It does not, however, appear that such purchases of land are common in this district.

There do not appear to the zillah Judge any advantages in the continuance of the practice; on the contrary, he apprehends that it is attended with great inconvenience, both in a public and private point of view; a discontinuance of the practice would be productive of great public good; all fictitious proprietors of land or other property are bad, and should be declared illegal.

The zillah Judge is not prepared to say what provisions of law would most effectually prevent the practice; no injustice would be suffered by individuals unless the law were to have a retrospective effect. To those persons at present holding lands under other names, a limited time might be allowed for registering them in their own names, subject, in case of non-compliance, to such penalty as the Legislature may declare them liable.

Given under my hand and the seal of the Court of Cuddapah, 17 November, A. D. 1837.

(L. S.) (signed) *J. Paternoster,* Judge.

In obedience to the within precept and extract from the proceedings of the Provincial Court of Appeal for the centre division, under date the 12th August last, annexing copy of a letter from the Register to the Court of Foujdarry Adawlut, dated 8th, with a copy of a communication from the Officiating Secretary to the Indian Law Commission on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names

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by any parties, whether native officers of Government or others, and requesting the sentiments of the several zillah and assistant Judges on the four points therein referred to,—the zillah Judge of Bellary has the honour to state, that he is not aware of the existence of the practice of holding landed property under fictitious names in the provinces under the jurisdiction of this zillah, and in the records of the office no instance can be found.

2. The provisions of Section 20, Regulation XXVI. A. D. 1802, and Regulation VI. A. D. 1832, gave rise to the practice here complained of in other zillahs; and while the restriction contained in those enactments is enforced, the practice will probably continue to be resorted to, and it never can be detected while the real owner and the person whose name is sued keep their own counsel, and continue on close and amicable terms with each other.

3. It can only be detected on the sudden rise of any quarrel in the presence of others, when the fictitious person might let out the secret; but if he benefits thereby from the real owner, it probably never would be revealed.

4. To obviate the evil consequences resulting therefrom, the Judge considers the restriction should be removed, and by the removal of the restriction, the lands would probably fetch a higher value.

5. To prevent the lands from being sold considerably less than their value, from any influence the native servants might exercise over the community, the measurement and value of the land might be first ascertained, and it should not be sold unless it fetched two-thirds of its value, and no private sale should be permitted, and no sale should take place without public proclamation of six weeks before it does take place.

Given under my hand and the seal of the Court, this 14th day of October, A. D. 1837.

(L. S.) (signed) *H. Bushby*, Judge.

According to the exigency of this precept, which accompanied an extract from the proceedings of the Provincial Court of Appeal from the centre division, under date 12th August 1837, together with a copy of a letter from the Register to the Court of Sudder Adawlut, dated 8th instant, and copy of a communication from the Officiating Secretary to the Indian Law Commissioners, directing the zillah Judge to forward his opinion on four points relative to the practice of holding lands in fictitious names; the zillah Judge has the honour to state, that he is not aware that it is the practice to hold lands under fictitious names in this zillah; on the contrary, he is of opinion that no such practice does exist, for in any dispute regarding landed property, the fact of the land being entered in the village and other accounts in the claimant's name, is always pleaded and adduced as proof of his right to the land. The zillah Judge can give no answer to the 2d, 3d, and 4th questions

Given under my hand and the seal of the Court at Chingleput, this 1st day of September, A. D. 1837.

(L. S.) (signed) *J. Horsely*, Judge.

1st. In making return to this precept, which accompanied an extract from the proceedings of the Provincial Court in the centre division, under date the 12th ultimo, on the subject of the expediency of rendering all lands liable to forfeiture purchased under fictitious names by any parties, whether native officers of Government or others, the acting assistant Judge of Chingleput has the honour to state, in reply to queries 1st and 2d, in a district where, with few exceptions, there exists but one description of title, viz. a pottah granted by the collector, each individual is of course anxious to have that document in his own name.

2d. Two classes of people will be exceptions to this rule, and by furnishing capital for the purchase or cultivation of land, for which they allow a pottah to be made in the name of another, may be said to hold land under fictitious names: 1st. Persons incapable of receiving a pottah; 2d. Persons who may have private reasons for wishing that the fact of their holding certain lands may not be known, sufficiently strong to induce them to run all the risk of loss and inconvenience consequent on their making use either of a fictitious name or that of another party; as far as my short experience enables me to form an opinion, I should say that neither practice was common, nor do I think

I think that any particular time or circumstance can be fixed upon as its commencement or cause.

3d. The advantages proposed by the individual who may resort to such an expedient of course vary considerably; in some cases they may attain their end, in others fail; but I should think no public or general advantage could possibly accrue from such a practice.

4th. The first class of persons mentioned above, consisting of public servants, &c. under certain circumstances, are already restrained by legal prohibitions.

5th. The second class, or those led to adopt the course by a supposition that it is their private interest to do so, might be effectually deterred by a legislative enactment, ordering the courts to look to the name in the puttah only, and to entertain no suits founded on private deeds or agreement, either executed prior to the procural of the original puttah, or subsequently, relative to the sale or transfer of such puttah lands, and directing that all such transfers should be public, by the vendor and vendee appearing before the tehsildar of the district, the vendee or transferee receiving in his presence from the puttahdar an agreement, stating that he consented to the making of the following year's puttah in his name; the tehsildar would note this in a book, and the puttah be made accordingly. Puttahdars might, under this system, sell lands they had previously mortgaged; but it is the duty of the vendee to ascertain this before he buys. This fraudulent practice, and that of mortgaging the same property twice, will never be put a stop to till it is made necessary for the vendor to certify, at the time of registering, that there are no mortgages on the property he is about to sell, or to state, if any exist, what they are, and to make the giving a false certificate a penal act, punishable by the criminal courts with fine and imprisonment.

Given under my hand and the seal of the Court at Cuddalore, this 29th day of September, in the year of our Lord 1837.

(signed) *C. R. Baynes,*
Acting Assistant Judge.

(True copies.)

(signed) *W. Douglas,* Register.

(No. 80.)

From *W. Harington,* Esq. Acting Second Judge, for Register, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

1st. I AM directed by the Provincial Court for the southern division, to acknowledge the receipt of your letter of the 8th August last, transmitting copy of a communication from the Officiating Secretary to the Indian Law Commission, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others; and desiring that the court will submit their own sentiments, as well as those of the several zillah and assistant judges within their jurisdiction, on the four points proposed for consideration.

2d. In conformity with the above instructions, the sentiments of the several zillah and assistant judges in the division on the question were called for, copies of whose answers are herewith transmitted.

3d. The experience of the judges of this court leads them to concur in the unanimous opinion expressed by all the zillah and assistant judges of the division, that the practice of holding landed property under fictitious names is common throughout its jurisdiction.

4th. The court have no reason to suppose that the practice is of recent origin; they, on the contrary, believe it to have prevailed for many years.

5th. The court are of opinion, that although instances may occasionally occur of a purchaser desiring that his land may be held under the name of another

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another person, in order that he may avoid being called before the revenue authorities at the time of the annual settlement, fraud is the secret motive by which it may with safety be assumed that parties to such fictitious transactions are in almost every case actuated.

6th. That a public servant purchasing landed property under a fictitious name can be influenced by any other motive but fraud, cannot for an instant be supposed; if not, why the concealment?

7th. The court are of opinion that no advantage whatever can arise out of the custom. It gives room to the practice of much fraud and deceit, and ought to be prevented.

8th. The court would suggest, as the most sure and convenient mode of putting a stop to the practice, that a general office of registry should be established in each zillah, that parties selling, mortgaging, or otherwise alienating their landed property, should be required to register their deeds; and that after the expiration of a certain time to be fixed, no deed for the alienation of land should be admitted by any court unless it was registered.

9th. With respect to public servants, the court would recommend that a law should pass, requiring them all, within a certain time, to appear and register all lands belonging to them; and that it should be enacted, that in the event of its being afterwards discovered that they possessed land, either in their own names or in the names of other persons, which they had not registered, they should be forthwith dismissed from their offices, and declared incapable of again serving the Government, besides their lands, so unregistered, being forfeit to the State.

10th. In order to prevent proprietors of land from being harassed by being called before the revenue authorities, the court are of opinion that proprietors should be empowered to name persons as managers of their property, and that having furnished them with instruments, to be drawn up on stamped paper, defining their powers, and having registered them in the cutcherry of the tehsildar of the talook, all business connected with the said property should be transacted with the agents instead of the actual proprietors.

I have, &c.

Trichinopoly, Register's Office,
28 February 1838.

(signed) *W. Harington*,
Acting Second Judge, for Register.

From *E. B. Glass*, Esq. Acting Judge, to the Register to the Southern Provincial Court of Appeal, Trichinopoly.

Sir,

With reference to your letter of the 26th ultimo, I have the honour to submit answers to the four points proposed by the Indian Law Commission, on the subject of parties purchasing lands under fictitious names, for the information of the judges.

Q. 1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. This practice is very prevalent in this country, especially by public subordinate officers.

2. If so, when did the practice originate, and what were the circumstances that induced it?

This practice has obtained from time immemorial. The public servants form an idea that if lands were purchased in their own names, the legality of such acquirement would be doubted, they therefore purchase lands either in the names of their sons or nearest friends.

3. Are there any advantages in the continuance of the practice, and if there be, what are those advantages?

There do not appear to be any advantages in the continuance of the practice.

4. In

The

4. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

The surest, safest, and simplest means of having this point carried into effect, without the risk of individual injustice, would be for a public notice being given, through the collector of each district, to individuals of all classes under their jurisdiction, that no purchase of lands which was unregistered at the respective courts, or before the collectors, would be considered valid, if disputed. This mode of proceeding would give the officer before whom such registry is made, an opportunity of ascertaining the legality of the purchase of the land, as well as who the real purchaser is; at the same time it would be also very necessary that previous to such registry being made, a public notice be given through the collector, that any individual having a claim to such lands, should bring it to the notice of the officer of registry, within a month from the date of the notice.

I have, &c.

Madura Zillah Court,
20 February 1838.

(signed) *E. B. Glass,*
Acting Judge.

N.B.—This letter was returned to the Acting Judge because it was not dated, and was returned to the court on the 27th February.

From *H. D. Phillips*, Esq. Assistant Judge, to the Register to the Provincial Court, Trichinopoly.

Sir,

I HAVE the honour to reply to your communication of the 14th August last, on the subject of rendering all lands liable to forfeiture which have been purchased under fictitious names, either by native officers of Government or others.

2d. The practice of holding landed property under fictitious names is very generally prevalent in the province under the jurisdiction of this court.

3d. The origin of the system dates from the assumption of the country by the present government. It is followed by persons of every class, as much as to avoid the numerous inconveniences to which the individual is subjected whose name is registered as proprietor (such as attending the jummabundy cutcherry to receive puttahs, and appearing in the court in his capacity of landholder, to give evidence regarding village and other disputes), as to evade payment of revenue and other dues, when process is issued for their recovery.

4th. The continuance of the practice does not appear to me likely to be attended with advantages of any kind.

5th. It appears to me that the enactment of a law prohibiting individuals in nowise connected with the Government from purchasing landed property in the name they may deem most expedient, would be an infringement of personal rights, unless the arrangement be proved to have been made with fraudulent intent; I am, therefore, unable to suggest any arrangement on the subject, which in its operation would not be likely to be attended with injustice to individuals.

I have, &c.

Tinnevelly Auxiliary Court,
1 February 1838.

(signed) *H. D. Phillips,*
Assistant Judge.

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Respecting Lands held under Fictitious Names.

From *F. M. Lewin*, Esq. Judge, to the Register to the Provincial Court, Southern Division.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 14th instant, together with the letter of the Indian Law Commissioners of 30th June last, in which they wish to have the opinion of the judges on four points, and I beg to submit a report upon them accodringly.

2. 1st Point. It is very common for parties to hold lands under fictitious names in this zillah; that is to say, in the names of relations and agents or managers.

3. 2d. This practice has prevailed from time immemorial, and the circumstances that led to it, are, that it saves the principal parties from much trouble, and from being sent for to the talook cutcherry constantly, and to the collector's cutcherry; and it originates in some measure from the natural habitual unwillingness of natives to conclude purchases and important transactions in their own names all over India, and also from an indefinite idea that there will be room to get out of scrapes by putting in somebody else's name in these bargains.

4. 3d. There are no advantages to the Government in this practice certainly; quite the contrary; it leads to concealment and under-hand practices, which are objectionable, and often create a great deal of trouble. To the people themselves who practise it, there are some advantages, such as are enumerated in the second point above, but many disadvantages also, from the fictitious person put forward assuming the character of the real proprietor, and disputing his master's authority, and dragging him into the courts, and before the collector, &c. &c.

5. 4th. The best way to prevent this practice is to have a registry in the collector's office, in which all sales and transfers shall be entered in the real names of the principals contracting after the talook tehsildars, shall have made a report of the desire of the parties to conclude a bargain. Then a notice should be stuck up at the talook cutcherry and at the collector's registry office, stating that the entry is going to be made, and anybody may object for one month to its validity.

6. This is partly the practice in Tanjore Proper, where the sales and transfers of land are so frequent, that without it, there would be no check to all kinds of frauds and confusion, as to who were the real proprietors, &c. &c.; but then this wise practice is that of the collector's establishing, and is not enforced beyond any Regulation of Government, and besides, it does not provide for the real names of the principals being entered as a *sine qua non*.

7. No contract of the above kind should be held binding in any court of justice, but such as had been concluded in the above manner, and any fictitious names being entered should render the bargain null and void, and this would prevent any tricks on either side.

8. There are a great many things to be said on this subject as regards the purchase of lands by native servants of the Government. In the first place, as things go on now, we never know anything of the private affairs of the native servants under control, whereas it is very important that we should know a great deal. There are so many changes take place in the appointments of the English gentlemen in the provinces, that they must be said, generally, to know nothing of the private affairs of the native servants, particularly in the Judicial Department.

9. The consequence of this is, in this zillah at all events, that every servant holding any influential post makes money as fast as he can, and amasses enough to build a good house and buy lands with. Now if the purchase of these lands was publicly proclaimed in the native servant's own name at the time, there would be room to ask where the money was got to make the purchase with, and whether it was saved out of the monthly pay, or how.

10. There are eight moonsiffs, for instance, in this zillah, all landholders more or less, and I cannot ascertain, except with their own consent, the amount of any one of their landed estates, much less where they procured the money to acquire them.

11. The same remark applies to the zillah court servants, one of whom, viz. the native register, lately dismissed for gross bribery and corruption, has purchased

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purchased an estate very recently, and I cannot ascertain any particulars regarding it without his consent, which of course he withholds.

12. The same exactly of the late nazir; and the same of the late moonsiff of Combaconum, all convicted of bribery.

13. The same remarks apply to the revenue establishment of the collectors, I imagine, particularly in this zillah, where the acquisition of land is a primary object with everybody who has money at command.

14. To make a law that no purchase should be considered valid in courts of law, unless registered *bonâ fide* as above described, would put a stop to a great deal of infamous litigation in Zemindary and Moottah districts, and on this subject I addressed the superior authorities from Salem in 1829.

15. In that zillah, although the moottadars are by Regulation XXVI. of 1802, obliged to register any transfers or sales in the collector's cutcherry, or else they are held liable for the revenue, yet the judges of the Sudder Adawlut have ruled, 17th September 1832, that this registry is only to secure the revenue, and is not to prevent private sales and transfers.

16. The consequence of this is, that there is a great deal of litigation in that zillah, founded on false documents and evidence, which is highly perplexing to the judicial authorities, which would be prevented by some law making it imperative to register all purchases and transfers, without which such would not be held binding in courts of law; but by rule of the Sudder Udawlut, the courts derive no guide or good at all from the collector's registry.

17. I see no objection to some such law as is proposed by the Indian Law Commissioners; on the contrary, I am of opinion that it would do a great deal of good, and prevent an immense deal of fraudulent litigation, besides affording some insight into the affairs of native servants of all classes in acquisition of lands, &c.

I have, &c.

Combaconum,
21 August 1837.

(signed) *F. M. Lewin*, Judge.

From *E. Bannerman*, Esq. Judge of Salem, to the Register of the Court of Appeal for the Southern Division, Trichinopoly.

Sir,

I HAVE the honour to submit my reply on the four points referred for report in your letter of the 14th August, regarding the practice of holding lands in feigned names.

2. In regard to the first point, I have the honour to state, that I cannot ascertain that the practice is very common, but from the strong motives which exist for such a practice, I think and I am told it prevails in many cases which it is impossible to ascertain.

3. In regard to the second point, I think the practice must have prevailed from the remotest period: of the circumstances which must have induced it, one is, a rule that lands held by Bramins or Mussulmans, are to be taxed 20 per cent. less than those held by others, owing to which, many lands must be fictitiously held in the names of the former for the sake of the exemption; and at the same time, I have not ascertained any individual cases of this kind, though many such, disguised in other shapes, must have come before me. Another motive for holding land in feigned names arises from the inconvenience the proprietor must undergo, if liable to be continually called up before zemindars or revenue subordinates regarding such, particularly if he live far from his land, or if he be a public servant, or person of respectability, who would not like to be continually called before a (perhaps overbearing) revenue subordinate. Besides the above cases, moonsiffs, who are agricultural speculators, public servants, who illicitly buy land at revenue sales, persons who wish to evade decretal sales, and persons who wish to simulate poverty to bar revenue demands, or to plead as paupers, hold their lands in feigned names.

4. In respect to the third point, I am not aware of any advantages, either public or private, but such as are indicated in the last answer, and it seems to me that all of the above advantages which are legitimate, might be secured by an order or law enjoining revenue functionaries and zemindars to permit the

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proprietors and tenants of lands to transact the affairs of such land with them through their duly appointed and registered proxies.

5. In respect to the fourth point, it seems to me that a law of forfeiture might always be evaded by the real proprietor's actually transferring the land, and at the same time securing for himself such terms of lease as would prevent his losing, though he would thus avert forfeiture; for although such transaction might often be suspected, it could seldom, if ever, be effectually proved. I altogether do not think that the practice can be effectually restrained by a legislative enactment, or otherwise than by removing the motives from which it rises. In regard to the first class of motives, namely, that arising from the inconvenience of attending zemindars and revenue subordinates, I have ventured to suggest the means of removing that motive; but in regard to the motive arising from the odious distinction of tax still maintained in favour of Bramins and Mussulmans, it seems to me that no law would set it to rights, and perhaps the collusion it gives rise to, is the only mode in which the evil can be counteracted.

6. Still the partly contemplated law of forfeiture, while it did no ill in any case, if accompanied by the permission of proxy I have above suggested, would tend to prevent collusive transfers in many cases for mere temporary purposes (such as the evading of a decretal order), when the motive for collusion was not extremely strong; for the mutual trust which the collusion would, under a law of forfeiture, involve, is such as would not be entered into on a light consideration. I, however, am altogether humbly of opinion, that as the law of forfeiture would be in such direct conflict with what in many cases must be an almost enviable practice, something more modified and indirect in its operation might be adopted, and, agreeably to this view, I venture to suggest a law declaring, that after a year from the date of promulgation, no claim of land, not duly registered, will be recognised in bar to attachment by a decretal order; it, however, being understood, that mere registry will not be received as conclusive evidence in favour of a claim, as this would lead to continual mispersonations of persons whom it was intended to defraud; whereas, if merely non-registration be looked to as the ground of decision, no motive for mispersonation would exist, and local functionaries paid by fees on registration, and on permission to inspect their registries, would take care to maintain the practice in their localities.

I have, &c.

Salem Zillah Court,
29 August 1837.

(signed) *E. Bannerman*, Judge.

From *W. A. Forsyth*, Esq. Acting Assistant Judge, to the Register to the Provincial Court of Appeal, Southern Division, Trichinopoly.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 14th ultimo, as well as a copy of a letter from the Officiating Secretary to the Indian Law Commission to the Court of Foujdarry Adawlut, bearing date the 30th June last, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others; and directing me to submit my opinion on the four points therein proposed for consideration.

Q. 1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. The practice obtains in this and every district I have been employed in to a very great extent, particularly among the native officers of Government of every grade, both in the Revenue and Judicial Departments.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

The practice, without doubt, originated long before the country was subjected to British rule, and there can be no question that it was chiefly the insecurity of property under the native government which

which induced it; since the enactment of the Regulations promulgated by our Government, this cause has not existed, but it is to be observed, that though the natives no longer live under a despotic government, the very fact of their rights, privileges, and immunities being respected, makes the attainment of wealth an object of greater ambition to every class of the community, who now resort to their old expedients as the best means, not as formerly, of deceiving the world as to the value and extent of their property, but of pursuing that system of fraud and duplicity which appears to be their peculiar characteristic from their earliest infancy. It is a notorious fact, that two-thirds of the native officers of Government are possessed of very little, if any property when they enter the service, and it will be found on inquiry, that a very great proportion of what they hold in land subsequent to the dates of their respective appointments is not only not registered in their own names, but it has come into their possession, directly or indirectly, by their taking undue advantages of their situations as public officers. This I am fully prepared to prove if called upon, and satisfactorily explain why the servants of Government resort to this practice. It appears needless to enumerate the frauds which are facilitated by this practice when resorted to by private individuals, who, though frequently the victims of their own want of principle, are not likely to renounce it till honesty among themselves, and probity among the native servants of Government, are held in greater esteem.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I am aware of none, and all those individuals, both European and native, with whom I have conversed on the subject, condemn the practice.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

The question requires much deliberation as respects others than the servants of Government. The only effectual way of putting down the practice among the native officers of Government would be, to declare all lands held secretly or under feigned names forfeited, and I conceive that no doubt can exist of the necessity and expediency of such a measure, or of the advantages which must be the result of such an enactment. With respect to those unconnected with Government, it would probably be expedient to declare all lands held under fictitious names liable to forfeiture, but the practice of holding landed property in other than their own names, merely illegal, and consequently not recoverable in the courts of civil judicature.

I have, &c.

Coimbatore Auxiliary Court, 30 September 1837.

(signed) *W. A. Forsyth*,
Acting Assistant Judge.

(True copies.)

(signed) *W. Douglas*,
Register.

From *W. O. Shakespear*, Esq. First Judge, Western Provinces, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 8th of August last, and as therein directed, herewith transmit copy of the several communications, noted as below *, together with my own sentiments, touching the

* Letter from the Judge of Canara of 18th September 1837.
Letter from the Acting Assistant Judge of Malabar of 26th September 1837.
Letter from the Acting Judge of Malabar of 20th October 1837.

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the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

2. With regard to the 1st and 2d questions propounded, the practice appears to exist to an almost incredible extent throughout the provinces of Malabar and Canara; at the same time that it seems totally impossible to obtain any clue calculated to form a most distant idea as to the exact time of its origin, neither is it easy to assign any cause for the lengths to which it is carried, attributable, as it may be viewed, to various causes; for instance, caste, laws of succession peculiar to the provinces, a wish which they may have to conceal their acquired wealth, corrupt motives to guard against attachment in case of a reverse of fortune, and though last not least, superstitious ideas imbibed, which lead to the purchase of land in the name of some particular deity or Sisters of Spring, if, after consulting astrologers, the omen be found favourable, but who, nevertheless, possesses no exclusive right whatever at any future period to dispose of the same; with many others that might be enumerated.

3. Touching the 3d, I am not aware of a single advantage derivable from the continuance of a practice which has tended so much to impede the speedy administration of civil justice, and must, so long as it exists, leave a door open for obstructing the operations of our courts, both as to determining proprietary right in the first stage, as also subsequently, how far such lands can be considered available in execution of decrees passed, in fact, against the actual purchaser.

4. With reference to the 4th and last, the opening of a general registry for the insertion of the name of the actual proprietor retrospectively and in futurity, under penalty of forfeiture by a special enactment, seems best calculated to protect the rights of all fair dealing individuals; and being a measure which the Government have a right to demand, can scarcely, I should imagine, when the object becomes generally known, be reasonably considered objectionable by any class, let their caste, prevailing laws, customs, and situations in life be whatever they may.

5. I further beg leave to add, that the foregoing letter of the 8th August, together with its accompaniments, were sent to the 2d and 3d judges, absent at Mangalore, who, I presume, will submit their opinions direct, and that the apparent delay which has occurred has been waiting a reply from the acting judge of Malabar, whose sentiments will be forwarded so soon as received.

I have, &c.

Provincial Court, Western Provinces,
25 October 1837.

(signed) *W. O. Shakespear,*
First Judge.

From *G. Bird*, Esq. Judge, Canara, to the Register to the Provincial Court of Appeal, Western Division.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 14th ultimo, transmitting copy of a communication from the Officiating Secretary to the Law Commission of the 30th June last, on the subject of holding lands under fictitious names, and in conformity with the directions contained therein, submit such information on the four points proposed for consideration as I am enabled to afford.

Q. 1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. It exists to a considerable degree in the province of Canara.

2d. When did that practice originate, and what were the circumstances that induced it?

It would be difficult to determine at what precise period this practice originated, but all agree that it must have been adopted in very early years, and have increased to the extent now prevalent, and from the inquiries I have made, I should say that it is questionable how far its origin can be said to have altogether proceeded from deceptive motives,

motives, but may have partly been adopted from the peculiar opinions and customs of the Hindoo and Mahomedan character, together with the laws of inheritance existing in the province of Canara, and which may be understood by specifying such as these:

A Hindoo being about to enter into speculations or purchase land, would have the nativity of his family calculated, and if the star of any particular member prevailed, the land would be purchased, or the speculation carried on in that individual's name.

Members of an individual family generally appoint one person as the manager or eyaman, and when land is purchased, it is in that individual's name.

Should a member of an undivided family acquire money of his own, and with such money purchase land, to prevent its being claimed by the members of his family, he would purchase the estate in the name of another.

If a man had no influence in his village to secure several privileges under the former government, to prevent interference on the part of a neighbour, or insure regular payment from a tenant, he would have purchased land in the name of a man of influence in his village.

The peculiar laws relative to the succession of property in this district amongst the Hindoos termed ali santan, and amongst the Mahomedan called heumoolla, may also be assigned as a cause, for by the law of the former, the persons succeeding to a man's property are his brothers, sisters, and the children of the latter, and his own children cannot inherit unless under an authenticated deed of gift termed "aneejut;" hence a man living under these laws and purchasing land, might, without any wrong motive, be very likely to purchase it in the name of his brother, sister, or immediate successor.

Again, under the rules of "heumoolla," all males are excluded from inheritance, the heirs to the property being the daughters with sister and their female offspring; this often might, and does affect the purchase of property, and the name under which it is purchased. To these may be added the common and deceptive motive of a man being in debt, to prevent property from being available for his debts, purchases land under a fictitious name.

Of a widow, to secure food and maintenance to which she would not be entitled if possessing property; land would be purchased during the lifetime of her husband in the name of another; with a variety of others.

3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I know of know advantage in the continuance of the practice; on the contrary, the difficulty the courts experience in ascertaining the proprietary right to land would be considerably lessened were it put a stop to; but it appears to me questionable whether in this province it could be conveniently done.

4. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely, and with least risk of injustice to individuals, effect that object?

This is naturally the difficult point, and I am of opinion that no general enactment can be passed prohibiting the continuance of the practice; but when a fraudulent and deceptive motive is proved to exist, that the lands should be liable to forfeiture, and a law enacted to render the parties amenable to the criminal court.

I have, &c.
(signed) *G. Bird*, Judge.

Zillah Court, Canara,
18 September 1837.

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Auxiliary Court, Zillah Malabar.

From *G. S. Greenway*, Esq. Acting Assistant Judge, Tellicherry, to the Register to the Provincial Court of Appeal, Western Division.

Sir,

I HAVE the honour to forward my replies to the four questions transmitted with your letter of the 14th August last.

I have, &c.

Tellicherry, 26 September 1837.

(signed) *G. S. Greenway*,
Acting Assistant Judge.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

This practice is universal throughout Malabar.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

By the law of North Malabar the succession to landed property is in the female branch, not in the male, and it may be that the practice of purchasing land under fictitious titles originated in this law; another inducing cause was the rapacity of men in power. The practice was universal long prior to the establishment of our courts on this coast, and has been continued by the native public servants from the same motive that probably gave rise to it, viz. the desire of concealing the amount of their property, however acquired.

3d. Are there any advantages in the continuance of that practice, and, if there be, what are those advantages?

There is no advantage whatever in the continuance of this practice, and the evils attendant upon it are most serious.

4th. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

A total want of upright principle is so universal throughout Malabar, that any mild provisions of law would prove wholly inoperative. I would suggest that it be enacted, that all transfers of land, whether by sale or mortgage, or in what way soever, shall be registered before some revenue officer; and that all present holders of property shall be required to register their claims in the same way; and that, unless so registered, no claim shall be considered good, or admitted in any court of law; and that, in all cases an extract from the register, attested by the revenue officer whose duty it may be, shall be considered sufficient proof that the provisions of the law have been complied with. There might, with good effect, be an additional clause, enacting, that where native public servants, revenue or judicial, shall be proved to have acquired landed property secretly, or to hold it under feigned names, such landed property so acquired, or so held, shall be forfeited to Government. An enactment of this description would, in all probability, have considerable effect; and if at all successful, would prove most beneficial in greatly diminishing litigation, and in almost entirely putting a stop to the vexatious delays at present thrown in the way of executing judgment in all civil cases.

(signed) *G. S. Greenway*,
Acting Assistant Judge.

Zillah Malabar.

From *J. C. Scott*, Esq. Acting Judge, Calicut, to the Register to the Provincial Court, Western Division.

Sir,

With reference to the Provincial Court's memorandum of the 11th instant, calling upon the acting Judge for his answer to that court's letter of the 14th August last, the acting Judge begs to apologise for the delay, and to state that press of business of this court has as yet prevented him giving that consideration to the points therewith forwarded, so as to enable him to form an opinion thereon, but will do it as soon as possible.

(signed) *J. C. Scott*, Acting Judge.

Calicut, 20 October 1837.

From *W. O. Shakespear*, Esq. First Judge, Presidency, Western Division, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

With reference to my letter of the 25th ultimo, I have the honour to forward copy of a communication this day received from the acting Judge of Malabar, submitting his sentiments on the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

I have, &c.

Provincial Court, Western Division, 4 November 1837.

(signed) *W. O. Shakespear*, First Judge, Presidency.

Zillah Malabar.

From *J. C. Scott*, Esq. Acting Judge, Calicut, to the Register to the Provincial Court, Western Division.

Sir,

With reference to your letter of the 14th August last, forwarding, in conformity to the instructions received from the Sudder Udawlut, copy of a communication from the Officiating Secretary to the Indian Law Commission to that court, under date the 30th June last, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others; and calling upon me to submit my sentiments on the four points proposed for consideration, I have the honour now to forward the same.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

It is very common, and most purchases are made in the name of a third person.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

The practice seems to be coeval with the sale of landed property. The peculiar tenure of landed property in the district, and the ceremony that had, and has to be gone through, to make the sale of land valid, rendered it often necessary. For example: the seller has to give water to the purchaser, and one of high caste cannot well receive water from another of inferior caste; therefore, the deed is sometimes executed in the name of a third person. Rajas and Bramins get the deeds in the names of their agents or pagadas; and a younger branch of a family, in purchasing land, often gets the deeds in the names of the elder branches, as a mark of respect. Persons residing at a distance from the land they may wish to purchase, also get it bought in an agent's name on the spot, who can receive the water, &c. from the seller.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

It being an ancient custom of the country, is perhaps, as much as can be said in its favour.

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4th. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

As the sale and transfer of landed property in a third person's name is no doubt often done with a fraudulent intent, lands thus transferred might be beneficially made subject to forfeiture; but to prohibit altogether the continuance of an ancient custom, to which the people are much wedded, would be considered an oppressive and arbitrary enactment. The provisions of Regulation XVII. of 1802, with certain modifications, might greatly prevent fraudulent sales, and it would be a less hardship to compel the people to register their deeds of sale and transfer, than to make all lands disposed of in a third person's or fictitious name liable to forfeiture, particularly if the fee for registering was lessened, or done away with altogether; more offices for such registry would be required in different parts of the district to prevent inconvenience.

(signed) *J. C. Scott*,
Acting Judge.

Callicut,
2 November 1837.

From *W. B. Anderson*, Esq. Third Judge, Provincial Court, Western Division, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

I AM directed to forward the opinions of the second and third judges of this court on the four points proposed for consideration in the letter from the Officiating Secretary to the Indian Law Commission, dated the 30th of June 1837 (on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names), as requested in your letter of the 30th March last.

I have, &c.

(signed) *W. B. Anderson*,
Third Judge, for Register.

Provincial Court, Western Division,
10 May 1838.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

I believe the practice is common in the western division of holding landed property in the names of persons other than the real owners.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

So far as I can learn, the practice had existed from a period so remote that its origin cannot be traced; that probably some at least of the same causes gave rise to it that are supposed to induce to its continuance; such, for instance, as a desire to settle propert yon a particular favourite or object of affection, or to prevent its dissipation by a spendthrift heir. It is, doubtless, often practised by dishonest debtors, with a view to secure their lands from being taken in execution by their creditors, and often also by persons in the service of Government, from an aversion to their names appearing as purchasers of land.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I cannot understand that there are any advantages attending the practice, save those which may result to individuals under such circumstances as are indicated in the above answer.

4th. In case of its being determined to prevent the continuance of that practice, what provisions of law would most

I am inclined to the opinion that no provisions of law would put a stop to the practice effectually without risk of injustice,

most surely and conveniently, and with least risk of injustice to individuals, effect that object?

injustice, or at least hardship, to individuals.

(signed) *W. B. Anderson*,
Third Judge.

9 May 1838.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

It is a common practice in this division to hold lands in the names of others.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

I see no possibility of ascertaining when it originated, or the circumstances which first induced it. Some of the motives for it at present appear to be: 1. Superstitious ideas as to the better luck of individuals of a family, whose names are consequently set forth as purchasers in the deeds of sale; 2. To guard against claims under the ordinary laws of inheritance which may be raised as to titles of acquisition, independent of the use of family property, when division has not taken place; 3. To provide for one's offspring in families in which succession by nepotism prevails, and that offspring might consequently be left without provision; 4. To prevent inconvenience to parties purchasing who may be unable to attend and go through the forms of sale observed in Malabar, and to make purchases for minors; 5. To defeat creditors; and 6. With regard to public servants, to conceal their acquisition of property from their superiors.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

The answer shows that individuals have advantages.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

I cannot see how it is to be prevented, except by a law requiring registry of all purchases. The person in whose name the land is purchased can now reap no advantage from a dispute with the actual purchaser, who might destroy the deed, and therewith his ground of claim; but the public record would be valid proof in favour of him whose name may be used, and would consequently render the interest of the actual purchaser uncertain, and liable to be destroyed by a quarrel. I, however, have great doubt as to the feasibility of a general registry, which might be relied on for genuine proof of right, while frauds are so boldly and frequently practised.

(signed) *J. Vaughan*, Second Judge.

10 May 1838.

(True copies.)
(signed) *W. Douglas*, Register.

(No. 2015 of 1838.)

From *J. W. Legeyt*, Esq. Register, Bombay Sudder Dewanny Adawlut, to the Secretary to the Indian Law Commission, Calcutta.

Sir,

In forwarding the accompanying reply to Mr. Officiating Secretary Grant's letter of the 30th June 1837, signed by the Assistant Register, Mr. Woodcock, I beg to apologise for the additional delay which has occurred in its transmission, and which has been occasioned by the frequent changes of late in this office, and the unfortunate loss of Mr. Greenhill's minute alluded to in Mr. Woodcock's letter.

Legis. Cons. 23 Nov. 1840. No. 17.

I have, &c.

Bombay Sudder Dewanny Adawlut,
31 December 1838.

(signed) *J. W. Legeyt*,
Register.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

(No. 541 of 1838.)

From *J. W. Woodcock*, Esq. Register, Bombay Sudder Foujdarry Adawlut, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, Calcutta.

Sir,

I AM directed by the judges of the Sudder Adawlut to acknowledge the receipt of Mr. Officiating Secretary Grant's letter, No. 31, dated the 30th of June 1837.

2d. In reply to the first of the four queries submitted by the Indian Law Commission, the judges direct me to state that the local authorities report the practice of holding lands under fictitious titles as prevailing very generally.

3d. In reply to the second query, I am instructed to observe, that the above practice would appear to be of long standing, and antecedent to the introduction of the British supremacy. Under the native dynasty, it arose from a fear of being considered too wealthy, and hence being a marked object to be plundered, more especially by the officers of government; under the British rule, the same course of proceeding has been engendered in a great measure by a desire to avoid being made responsible in property for judgments passed by judicial tribunals, and to ensure the benefits accruing to the poorer cultivators (who in general are their partners) from remissions on account of bad seasons, want of means, or other causes of inability to liquidate the public rent or revenue. Superstition is occasionally alleged as a ground for holding lands in another's name; and the public servants are supposed to resort to this expedient to conceal the extent of their gains. Lastly, it is considered a means of preventing sharers in a family estate from participating in what would otherwise belong to them.

4th. There seems no difference of opinion in respect to the third query; all agree that no advantage can accrue from a practice which, from its secrecy, almost implies fraud; hence it should be disallowed, which is partly the purport of the fourth query. The judges are of opinion that any such tenure should not be recognised as legal; they would give due warning before any law was brought into operation, that existing defects may be remedied, and where fraud in any shape is established, they would punish the parties by fine, commutable to imprisonment, and would declare the land liable to forfeiture: they would also insist that the names of all shareholders in lands be entered, with their respective shares, in the village or other public accounts.

5th. As the fourth puisne judge differs in opinion from the majority of the court, he has instructed me to enclose his Minute.

6th. The judges request me to offer their apologies for the delay which has occurred in answering the reference to them, which has not originated with them.

I have, &c.

Bombay Sudder Foujdarry Adawlut,
30 April 1838.

(signed) *J. W. Woodcock*,
Register.

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Legis. Cons. 23 Nov. 1840. No. 18.

Miscellaneous Department. Present: J. Pattle and C. Tucker, Esqrs.

(No. 140.)

From *E. Currie*, Esq. Secretary Sudder Board of Revenue, to the Secretary of the Indian Law Commission, Calcutta.

Sir,

The Sudder Board of Revenue having considered it expedient, before replying to your predecessor's letter, No. 32, of the 30th June last, to obtain the opinions of the officers under their control on the subject of persons holding or purchasing landed property under fictitious names, circulated the questions contained in your letter above referred to, to their subordinates, and called upon them to submit their sentiments. This course of procedure has necessarily occupied much time, and has occasioned the delay in replying to your communication.

2. I am now directed to state the substance of the information and opinions received from the local officers, together with the sentiments of the Board, and to request that you will lay the same before the Commissioners:—

1st. The practice of benamee, or fictitious purchases, has been common, from time immemorial, in all the districts under the control of this Board, in which a proprietary right in the soil is recognised, except in Cuttack, where instances of its occurrence are comparatively rare.

2dly. It obtained before the acquisition of the country by the British, and had its origin probably in the fear which men naturally entertain of appearing to possess property in times when the powerful knew no restraint but their own wills, and the weak had no protection from law. It has continued under our sway, partly from affording to the dishonest the means of evading the payment of their debts, whether to the state or to individuals, partly from the laws in force disqualifying certain classes of public servants from holding or purchasing lands in the districts where they are employed, and partly from the wish to evade the responsibility attaching to landholders in matters of police.

3dly. No public advantage whatever can result from the practice, but, on the contrary, much evil and inconvenience.

4thly. The suggestions made by the several local officers, for the removal of the admitted evil consequences of the practice, are various, many advocating an absolute confiscation of the property, and some recommending fine to the extent of one year's revenue. A few are of opinion that the strict enforcement of Regulation VIII. of 1800 might be sufficient, while others suggest that no plea or action of any kind should be maintainable, if founded upon a benamee or fictitious purchase.

3. The Board concur in the foregoing opinions as to the prevalence, the causes and the effects of the practice; and as they feel assured that it is never resorted to but for dishonest purposes, they deem it imperatively necessary that the law should provide for its effectual suppression.

4. In the draft of a proposed Act for regulating the sales of lands for arrears of revenue (now under the consideration of Government), it is provided that no summary suit for rent shall be entertained at the instance of a proprietor who may not have recorded his name in the collector's register.

5. In addition to this, the Board would recommend that it be enacted that no suit for real property shall be cognizable by any of the regular civil courts of justice if the cause of action be fictitious or benamee purchase, or title acquired by such means; and that it shall be imperative on the judges of those courts to dismiss all suits instituted on such grounds, and that against such decision no appeal shall lie or be admitted, save and except on the ground of irrelevancy to the Regulations, when an appeal shall be allowed in common with other suits.

I have, &c.

Sudder Board of Fort William,
5 June 1838.

(signed) *E. Currie*,
Secretary.

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Respecting Lands held under Fictitious Names.

Legis. Cons.
23 Nov. 1840.
No. 19.

(No. 1531.)

From *T. T. Metcalfe*, Esq. Commissioner, Dehlee, to *H. B. Harington*, Esq. Register to the Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, under date the 21st ult., and its enclosure, from the Secretary to the Indian Law Commissioners, dated the 20th of June last.

The object of these communications is stated to be, to elicit some measure which shall prevent the subordinate judicial officers and others from acquiring landed property secretly, and holding it under feigned names, the Government deeming such practice productive of inconvenience.

I beg to subjoin answers to the queries propounded.

Answers to queries 1st, 2d, and 3d :—I cannot from personal knowledge state that the practice does or has ever existed ; but I see no objection to a law to prevent its occurrence ; on the contrary, I deem an Act of the Legislature for this purpose would be very salutary in preventing a pernicious practice for the future, and bringing to light any instances in which it may have existed heretofore.

Answer to query 4th :—The most sure, the most convenient, and, at the same time, the most just provision of law to prevent the practice would, in my opinion, be an act of Government, rendering all landed property which shall be proved in a court of law to have been acquired and held under a fictitious name, after a date to be prescribed, liable to forfeiture, and rendering all landed property now held in a feigned name, upon similar proof, also liable to forfeiture if not duly registered within one year after the promulgation of the Act, in a book to be kept for the purpose in the office of every judge or collector of land revenue.

I have, &c.

Dehlee Commissioner's Office,
17 August 1837.

(signed) *T. T. Metcalfe*,
Commissioner.

(No. 220.)

From *C. Lindsay*, Esq. Officiating Judge, Dehlee, to *H. B. Harington*, Esq., Register Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

WITH reference to your circular letter, No. 783, dated the 21st July last, with copy of one from the Law Commissioners, No. 29, dated the 30th June last, I have the honour to state that the practice of holding landed property under fictitious names is almost wholly unknown in the Dehlee territory ; I conceive, therefore, that any further observations from me on this subject are unnecessary.

I have, &c.

Dehlee Territory, Judge's Office,
25 September 1837.

(signed) *C. Lindsay*,
Officiating Judge.

(No. 138.)

From *A. Fraser*, Esq. Magistrate, Paneeput, to *H. B. Harington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge your circular, No. 783, of the 21st ultimo, with enclosure.

2. In reply to the 1st question proposed by Mr. J. P. Grant, the Officiating Secretary to the India Law Commission, I beg to remark, that I have no reason to believe that in any one instance is land held under fictitious names in the district under my charge. I conceive, therefore, that further observations from me on the subject are unnecessary.

I have, &c.

Zillah Paneeput, Magistrate's Office,
19 August 1837.

(signed) *A. Fraser*,
Magistrate.

(No. 125.)

From *S. S. Brown*, Esq. Magistrate, Hissar, to *H. B. Harrington*, Esq. Register to the Sudder Nizamut Adawlut.

Sir,

In reference to your circular of the 21st July, No. 783, relative to the practice of holding landed property under fictitious names, I have the honour to state that the practice has never obtained in this district, nor I believe in any of the other districts attached to the Delhi territory generally, though common in the Dooab and Rohilcund.

2. The practice originated with the introduction of our rule into these provinces, and of late years it has been greatly extended. It arose, and is still principally to be found in instances where public or private debtors, wishing to avoid the demands against them to which their estates might be liable, either effected a fictitious transfer of such as they had at the time, or, if a new acquisition, bought and took in mortgage, in the names of their dependants or of men of paper. It is also resorted to by a few proprietors of the Kaith or Bunuya tribe, with a view to escape the responsibility and calls on the part of the revenne and police authorities, to which they would otherwise, as landholders, be exposed.

3. It would be difficult under this view to point out any advantage in the continuance of the practice, but its prevention appears to be beyond the grasp of the law. It would be almost impossible to obtain legal proof of the fictitious holding, supposing the nature of the evidence sufficient to constitute proof to be first laid down, and any provisions of law would be null and void to suppress an arrangement privately concluded between two parties, and unevidenced as it would then be by any overt act.

I have, &c.
(signed) *S. S. Brown*,
Magitrate.

Office of the Magistrate, Hissar Division,
Delhi Territory, 17 October 1837.

P.S. I beg to add, with reference to your further call of the 4th ultimo and 6th instant, that the delay in my reply has been owing to my leave of absence in the past month, and to my moving into tents on my return, which led to the letter being overlooked.

(signed) *S. S. Brown*, Magistrate.

(No. 203.)

From *P. Trench*, Esq. Officiating Magistrate, Delhie, to *H. B. Harrington*, Esq. Officiating Register Nizamut Adawlut, Allahabad.

Sir,

I have the honour to acknowledge the receipt of your circular, No. 783, dated the 21st ultimo, and its enclosures, from the Secretary to the Indian Law Commissioners, dated the 20th June last.

The Government deeming the practice of subordinate judicial officers and others acquiring landed property secretly, and holding it under fictitious names, as inconvenient, the object of your communication is to elicit some measure that shall prevent its occurrence in future.

I beg to annex replies to the queries proposed as follows:—

Reply to query first:—Of the practice alluded to I have no personal knowledge, but it is currently represented to be very commou in this city, and property to a considerable extent is said to be held under feigned names.

Reply to query second:—The date of its origin, allowing the practice to prevail, cannot be easily fixed; but of the motives which induced it, the principal, it is probable, were, to conceal, under former tyranical rulers, wealth from the rapacity of power, to defraud creditors of their dues, to defeat the ends of justice and law, by secreting the means which might satisfy them, and more usually to lull suspicion of iniquitous accumulations, with the view longer to pursue dishonesty and corruption under the apparent garb of poverty or distress.

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Reply to query third :—No possible advantage that can be imagined.

Reply to query fourth :—I think the most certain and least inconvenient provision of law for putting a stop to the custom, would be an Act of the Legislature, making all property which shall be proven in a court of judicature to have been obtained and held under a fictitious name, after a prescribed date, to be liable to forfeiture; and all property now held under a feigned name also liable to the same penalty, if not registered, within six months after the promulgation of the Act, in a book to be kept for that end in the office of the judge or collector.

I have, &c.

Delhie, Magistrate's Office, 26 August 1837. (signed) *P. Trench*, Officiating Magistrate.

(No. 268.)

From *C. Gubbins*, Esq. Joint Magistrate, Rohtuck, to *H. B. Harrington*, Esq. Register, Allahabad.

Sir,

In answer to your circular letter, No. 783, dated the 21st ultimo, and its enclosure, I have the honour to inform you that the practice of persons holding land property under fictitious names does not obtain in this district, landed property being of little value.

I have, &c.

(signed) *C. Gubbins*, Joint Magistrate.

Office, Rohtuck Dⁿ, Dehlee Territory, 14 August 1837.

(No. 166.)

From *J. Lawrence*, Esq. Officiating Magistrate, Southern Division of Dehlee, Goorgaon, to *H. B. Harrington*, Esq. Register, Allahabad.

Sir,

I have the honour to acknowledge the receipt of your letter of the 21st ultimo, with its enclosure, and beg to submit my replies to the queries of the Officiating Secretary to the Law Commissioners.

1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. It is not the practice to hold lands under fictitious names in this district. Indeed I do not recollect ever hearing of a case of this kind in the Delhie territory.

2. If so, when did that practice originate, and what were the circumstances that induced it?

I have already stated that it is not the practice in this zillah.

3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I am not aware of any fair advantages which arise from this practice. It can only, I conceive, be done to evade, if necessary, either the demands of creditors or the laws of the land.

4. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

Forfeiture would most surely effect this object; and though such a rule might in particular cases press hardly on an individual, this, however, might be remedied by Government remitting the penalty, should it be considered expedient in any case. Any punishment short of forfeiture would, I am inclined to think, be ineffectual.

I have, &c.

(signed) *J. Lawrence*, Officiating Magistrate.

Magistrate's Office, Southern Division, Dehlee, Goorgaon, 15 August 1837.

(No. 196.)

From *H. S. Boulderson*, Esq. Commissioner, First Division, Meerut, to *H. B. Harrington*, Esq. Register of the Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, dated 21st ultimo, with copy of a letter from the Indian Law Commission, on the subject of Ismifurzee holders of lands, and to submit the following replies to the queries therein contained.

2. The practice of holding landed property under fictitious names cannot be said to be common in these districts. Instances might be doubtless found, but the practice has very greatly abated. The abatement I attribute to the publicity with respect to transfers of property given by the collectors office register, and the prevention by collectors of the possession of unregistered persons whenever any contest arose. The consequence was, that the real proprietor found himself obliged to resort to a civil action, to oust the Ismifurzee whose name he had caused to be registered. A late view of the law, quite opposed to the above, which had prevailed so many years, will afford full opportunities for the revival of the practice of holding land under fictitious names, should it become an object to do so, by preventing the knowledge of the transaction coming to light, inasmuch as registry of the transfer will not be a matter of necessity, and by preventing the collector from exercising the useful check he formerly did.

3. I cannot state the origin of the practice. I presume that lands bought by fathers, in the name of their children, and such like palpable transactions, the intention of which is evidently to save litigation after the real buyer's death, are not included under the odium of fictitious name holdings.

4. There are no advantages in the continuance of the practice, which can be necessary only for the purposes of fraud committed or intended.

5. I do not think that any provisions of law could be more effectual for the prevention of the practice than those already existing, if the prohibition to act upon those laws, as understood and construed by all the Boards of Commissioners and Revenue previous to the present Sudder Board, be withdrawn. I know not a more effectual proof of the efficiency of those laws than will be found in the fact, that in the western provinces, where the collectors' registry of mutations has been kept up (though from the stress of business and want of officers not so well as it should have been) according to the views of the law prescribed by former authorities, the practice is very insignificant; and that in the lower provinces, where the registry has not been made, or made only under such construction of law as that now prescribed here, which does away with its necessity and its use, the practice prevails considerably.

6. In addition to the above, if it were enacted that a real proprietor, when he had sued an Ismifurzee in the civil court, and his right being shown, should have to pay all the costs of suit; and that a judicial officer, or any class of persons whom it might be deemed right to prohibit from the acquisition of landed property, could not recover at all;—every desirable check would, I think, be put upon the practice.

I have, &c.
(signed) *H. S. Boulderson*, Commissioner.

Commissioner's Office, First Division,
18 August 1837.

(No. 112.)

From *G. W. Bacon*, Esq. Judge, Zillah Saharunpoor, to the Register to the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, under date the 21st ultimo, with its enclosure.

With reference to the several points contained in the Secretary to the Indian Law Commissioner's letter, I beg to state, that holding landed property under fictitious names, as far as I can learn, does not appear to be common in this district. I know not what advantages are derivable by the continuance of the

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practice to anybody but those who are immediately concerned; such persons, I believe, purchase and hold lands under fictitious names, in order to secure their estates from attachment and sale, in the event of any decree of court or other legal demand being made against them.

I apprehend considerable difficulty will be experienced in framing a law to carry into effect the proposal contained in the last paragraph of the Indian Law Commissioner's letter. Immediate forfeiture of the property to Government, in the event of discovery upon full legal proof, might possibly prevent the extension of the practice in those districts where it may be prevalent.

I have, &c.

(signed) *G. W. Bacon*, Judge.

Zillah Saharunpoor, Judge's Office,
29 August 1837.

(No. 121.)

From *R. C. Glyn*, Esq. Judge, Zillah Meerut, to *H. B. Harrington*, Esq. Register Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, dated 21st ultimo, with enclosure.

With reference to the several points on which the Indian Law Commissioners require my opinion, I beg to submit them as follows :—

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

2d. If so, when did that practice originate, and what were the circumstances that induced it?

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

4th. In cases of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

The practice was first introduced under the British Government by Europeans and native public officers; the former precluded from holding lands in their own names, and the latter, when not so precluded, considering it inexpedient to appear as land proprietors in the districts in which they held official situations. Europeans will have no further occasion for employing feigned names, and since the disclosures and restitutions made by the Special Commissioners, secret purchasing by native public officers has fallen into disuse, and is very rarely had recourse to by individuals of other classes, as Ismifurzee conveyances of lands, houses, and other real interests, have never been recognised in the civil court of this district, such property being always considered to belong to the persons in whose names it appears registered. With reference to this district, I see no necessity for interference by legislative enactment.

I have, &c.

Zillah Meerut, Judge's Office,
26 August 1837.

(signed) *R. C. Glyn*, Judge.

(No. 34.)

From *J. Neave*, Esq. Judge, Zillah Allyghur, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to submit the following reply to your letter, No. 783, under date the 21st of July last.

The practice of holding lands under fictitious names, though not common, does exist in this district, and has originated in my opinion since we have had the country. Its object, I fear, in the majority of cases, is to conceal purchases made by

by servants of the Government, and where this is not the case, it has been had resort to for the provision of some relative whose name is used to prevent dispute or quarrel hereafter. To check the first, the annulment of the sale so effected, and fine to the extent of the purchase money, would perhaps tend to remedy the evil: the sellers generally being the parties cajoled, any interference with them, I do not think necessary.

I have, &c.

Zillah Allyghur, 29 September 1837. (signed) *J. Neave*, Judge.

(No. 145.)

From Lieutenant-colonel *Young*, Superintendent Dehra Dhoon, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny and Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letters, Nos. 29 and 1056, under dates the 30th June and 4th September 1837, and in reply to inform you, after particular inquiry on the subject, that holding land under fictitious names is not common in the provinces, and in the jurisdiction of this court, nor can I ascertain an instance of its existence.

I have, &c.

(signed) —— *Young*, Lieutenant-colonel,
Dehra Dhoon, Political Agent's Office, P. Agent.
15 September 1837.

(No. 206.)

From *W. J. Conolly*, Esq. Magistrate, Seharunpoor, to *H. B. Harrington*, Esq. Register of the Nizamut Adawlut for the N. W. Provinces, Allahabad.

Sir,

IN reply to your circular letter, No. 783, of the 21st July last, I beg to state for the information of the Court, that the practice of holding lands under fictitious names does not, as far as I know, prevail in this district.

I have, &c.

Magistrate's Office, Zillah Seharunpoor, (signed) *W. J. Conolly*,
23 August 1837. Magistrate.

(No. 98.)

From *William Crawford*, Esq. Magistrate, Moozuffernuggur, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

IN reply to your circular letter, No. 783, of the 21st July last, giving cover to a copy of a letter, No. 29, dated 30th June preceding, from the Officiating Secretary to the Indian Law Commission to your address, I have the honour to submit the following unavoidably brief replies to the questions proposed in paragraph 2 of the latter communication:

1. The district of which I am now in charge is of small extent in its area, and yields an annual revenue to Government of about Rs. 5,75,000 only; the villages are for the most part in the possession of resident proprietors, and I am therefore of opinion that the practice of holding landed property under fictitious names is by no means common; no cases of this nature, affecting either subordinate judicial officers or private judicials, having been brought to my notice since I received charge of the district, about six months ago.

2. As the practice above mentioned does not appear to prevail here, I am of course precluded from furnishing any answer to the question.

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3. I have never yet been in any situation in which I have had occasion to make official inquiry regarding the extent of this practice and its results, as beneficial or the contrary; and,

4. Having no data whatever on which to form an opinion on the important subject under consideration, I feel myself quite incompetent to submit any suggestions respecting it.

I have, &c.

Moozuffernuggur Magistracy, 14 September 1837.

(signed) *William Crawford*, Magistrate.

(No. 104.)

From *G. F. Franco*, Esq. Magistrate, Zillah Meerut, to *H. B. Harrington*, Esq. Register Nizamut Adawlut, Allahabad.

Sir,

In reply to your circular letter, No. 783, of the 21st ultimo, and its enclosure from the Secretary to the Indian Law Commissioners,

1. I have the honour to state that the practice of persons holding landed property under fictitious names is by no means general in this part of the country, and the only circumstance I am aware of, which would induce a person to have recourse to such a measure, would be to evade any penalty to which he would be liable for holding it himself.

2. It is not unusual for a person to register lands possessed by him in the names of his sons, wife, or concubines, in order that in the event of his death, they may succeed to the possession without dispute; but when this is the case, it is done openly and without concealment, and I imagine there is no advantage in a fictitious registry, unless, as I said before, in certain cases, to evade a penalty to which a real possessor may be liable.

3. Should it be determined to prevent the continuance of the practice alluded to wherever it may exist, I should conceive that no means would be more effectual to suppress it than to declare that all lands which may in future be recorded under a fictitious name should be rendered liable to forfeiture.

I have, &c.

Zillah Meerut, Magistrate's Office, 19 August 1837.

(signed) *G. F. Franco*, Magistrate.

(No. 63.)

From *G. H. M. Alexander*, Esq. Officiating Magistrate, Boolundshuhar, to *H. B. Harrington*, Esq. Register of the Sudder Nizamut Adawlut, Allahabad.

Sir,

In reply to your letter of the 21st July, No. 783, and with reference to the copy of the letter from the Secretary to the Indian Law Commission of the 30th June, No. 29, which accompanied it, I have the honour to state that,

2. I am not aware of the existence of any legislative enactment prohibiting subordinate judicial officers from holding lands in their own names, and therefore I do not think that the practice at all obtains of their holding them under fictitious titles, as there can be no necessity for their having recourse to fraud for the attainment of that which is not prohibited.

3. I believe it, on the contrary, to be a common practice for persons in subordinate judicial stations to purchase lands openly at public sales, or to have the estates of others, on private arrangement between the parties, transferred to them and registered in their real names in the collector's records.

4. This practice, though I believe it to be general, is not, in my opinion, one that ought universally to be prevented, without proper restrictions, as it is but natural to conclude that persons so totally uninfluenced by any honourable or moral feeling, or actuated in any degree by a proper sense of duty, as the native judicial officers are, whether thanadars or the sheristadars and nazars of a foujdaree court, would, if possessed of landed property within the district or thannah in which they stood appointed, on the occurrence of a crime, and more particularly

larly a serious crime, in their villages, endeavour to screen the criminals, and obstruct as much as possible the ends of justice, rather than, by aiding in the apprehension and conviction of the offenders, subject themselves to suffer inconvenience, and perhaps detriment to their property, by the loss of able-bodied and hard-working tenants, however much the latter might have rendered themselves deserving of punishment.

I have, &c.

Bolundshuhur, Magistrate's Office, 13 September 1837. (signed) *G. H. M. Alexander*, Officiating Magistrate.

(No. 14.)

From *T. P. Woodcock*, Esq. Magistrate, Zillah Allyghur, to *H. B. Harrington*, Esq. Register to the Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular, No. 783, dated 21st July last, relative to the practice which obtains in the country of persons holding landed property under fictitious names, and in reply to the queries contained in the letter from the Secretary to the Law Commission, to your address, to report,

1. That the practice referred to obtains to a very trifling extent in this district.

2. That the few cases which do occur in this district have had their origin among the omlah of the courts, who desired to conceal the circumstance of their possessing landed property.

3. I am ignorant of any advantages which the continuance of this practice can afford to either Government or the people, in similar cases to those which occur in the district.

4. In event of the Government determining that the practice shall not continue, and supposing of course that Government feel secure in the grounds which would render the proposed enactment just, the immediate attachment of landed property so held would be the securest method of abolishing the practice.

I have, &c.

Zillah Allyghur, Magistrate's Office, 9 November 1837. (signed) *T. P. Woodcock*, Magistrate.

(No. 37.)

From *T. J. Turner*, Esq. Officiating Commissioner, Third Division, Barelly, to *H. B. Harrington*, Esq. Register of the Courts of Sudder Dewanny and Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, of the 21st ultimo, and to submit the subjoined reply to the several questions proposed by the Indian Law Commissioners.

2. The practice of holding landed property under the names of other persons than the real owners, was of frequent occurrence many years back, but is now almost unknown.

3. This practice was resorted to for several reasons; first, to conceal the acquisition of landed property by persons who, from their official situations, were prohibited from making fresh purchases; secondly, with a view of eluding the vexatious interference and oppression of the government native officers, revenue and police; thirdly, to save the property from sale in satisfaction of private debts.

4. Improved administration and a general diffusion of the knowledge of the regulations have almost entirely, if not altogether, removed the several causes which led

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led to the practice in question, and as no advantage is now to be gained by adhering to it, the practice has been discontinued.

5. It does not appear to me, for the reasons above shown, that any new legislative Act is requisite.

I have, &c.
(signed) *T. J. Turner*,
Officiating Commissioner.

Commissioner's Office, Third Division Barelly,
18 August 1837.

(No. 75.)

From *W. Okeden*, Esq. Officiating Judge, Zillah Mooradabad, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

In reply to your circular, No. 783, of the 21st ultimo, and enclosure, I have the honour to submit, for the information of the court,

1. In this district it is not customary to hold lands under fictitious names, nor are sales ever made without ascertaining who is the *bonâ fide* purchaser.

2. I am not aware of any advantage in allowing such a practice, and if such be the case in other districts, I am of opinion the sooner it be declared illegal the better. If an Act was passed prohibiting such a practice, and declaring all lands so obtained after due proclamation of the law to be liable to forfeiture, the custom would cease, and no individual suffer injustice.

(signed) *W. Okeden*, Officiating Judge.

Zillah Mooradabad, Civil Judge's Office,
25 August 1837.

(No. 8.)

From *T. H. Sympson*, Esq. Joint Magistrate, North Division, Mooradabad, to *H. B. Harrington*, Esq. Register Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I have the honour to submit the following reply to your letter, particulars noted in the margin.*

1. The practice of holding lands under fictitious names is one of common occurrence in this zillah.

2. As to the origin of such practice, and the circumstances which induced it, I am unable to express a decided opinion; I conceive, however, that the following circumstances have, in a great measure, led to the continuance, if not to the introduction of the practice: First, the orders issued by the Government, by which Europeans are prohibited from holding lands; also those by which the officers of Government are precluded from purchasing lands at public sales. Secondly, A want of confidence on the part of the natives of India in the British Government, when first they became subject to it; and, owing to their imperfect knowledge of the particulars contained in the enactments which then appeared, being unwilling to engage for their lands directly with the Government, probably under the apprehension of their respectability being injured, either owing to the rules laid down as regards the collection of the revenue, or on account of the liabilities attaching to the proprietors of lands, in instances in which they might fail to produce or apprehend criminal offenders. Thirdly, The practice that formerly existed in many parts of this country, of requiring security from proprietors for the due payment of the revenue for which they had agreed; in which cases, the said proprietors

* Circular letter from the Register Sudder Adawlut, N. W. Provinces, dated 21st July 1837, No. 783, with copy of letter from the Secretary to the Indian Law Commission, relative to the practice which obtains in this country of persons holding landed property under fictitious names, and requesting to be furnished with a report on magistrate's opinion on several questions connected with the subject.

prietors would generally prefer putting in some relation or servant, as the nominal engager with the Government, and tender in their own names the amount of security demanded. Fourthly, The dread of quarrels and disputes arising amongst their future heirs, and the great probability of lawsuits being the consequence. The cases of persons prohibited by the Regulations from holding lands, and who do so under fictitious names, is obviously an evasion of the law, to which, to answer their own purposes, they have resort.

3. I am of opinion that no advantages are likely to be obtained by a continuance of the present practice, beyond those that would appear to result to the parties concerned.

4. Instructions issued to the several collectors of land revenue, calling their attention to this practice, and strictly forbidding them to admit on their records the names of any individuals who may be ascertained not to be the real proprietors, might possibly tend to check such practice in future; and an enactment declaring that whenever a person holding lands under a fictitious name, may sue the real proprietor, no evidence of the nature of the transfer will be admitted, but that such arrangement will be considered as having been duly entered into, might likewise help to attain the object required.

I beg to add, that your circular letter above referred to was by some neglect mislaid, otherwise so long a time would not have transpired previous to your receiving a reply to it.

I have, &c.

N. Division, Mooradabad Magistracy, (signed) *T. H. Sympson*,
Bijnour, 23 September 1837. Joint Magistrate.

(No. 25.)

From *Geo. Blunt*, Esq. Officiating Magistrate, Mooradabad, to *H. B. Harrington*, Esq., Register to the S. D. and N. A., N. W. P. Allahabad.

Sir,

In reply to your circular letter, No. 783, of the 21st of July, and its enclosures, I have the honour to submit, for the information of the court, that from the inquiries I have made, it does not appear that the practice of holding landed property under fictitious names obtains in this district, and that no sales are made of landed property without the name of the purchasers being fully ascertained.

2. The advantages of such a practice, should it exist in any district, I am not aware of, and consider it desirable that it should be prohibited.

3. If an Act was passed declaring that all lands so held after a certain date would be liable to confiscation, unless registered in the real name of the purchaser, it would I think prevent a continuance of the practice, and preclude the possibility of injustice to individuals.

I have, &c.

Mooradabad, Magistrate's Office, (signed) *Geo. Blunt*,
25 September 1837. Officiating Magistrate.

(No. 44.)

From *J. Craigie*, Esq. Officiating Collector, Zillah Suheswan, Badaoon, to *H. B. Harrington*, Esq. Register to the Sudder Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I have the honour to acknowledge your letter of 26th ultimo, with copy of circular, No. 783, from the Officiating Secretary of the Indian Law Commission, and to furnish the information required.

2. In reply to query 1st, I have the honour to state that the practice of holding land under fictitious names is happily unknown in this district; consequently,

3. A reply to query 2 is obviated.

4. As regards the 3d question, the custom alluded to is replete, in my opinion, with disadvantage, and devoid of a single counterbalancing benefit; holding out

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encouragement for chicane, and facilitating the evasion of repeated enactments, more especially as relates to land held by native officers of Government.

5. Should (as suggested in query 4) it be resolved to prevent the continuance of such practice, the most effective check would be, I think, the passing an Act, that if lands henceforth be transferred either by sale, deed of gift, decree of court, or by any other form or mode, and entered in the collector's books, and be thereafter proved to have been made over to any person or persons assuming false names, or that the real names of parties be entered, but those parties be not *bonâ fide* the proprietors, such land shall be forfeited to government. I would take the liberty of suggesting that mortgage seems also to afford a field for fraudulent practices, and a similar enactment regarding all such engagements might be passed; and it be ordered that at the time of transfer the provisions of such Act be notified to the parties put in possession in the presence of the officer before whom the deed be executed.

I have, &c.
(signed) *J. Craigie*,
Officiating Collector.

Zillah Suheswan, Magistracy Badaoon,
2 November 1837.

From *C. Fagan*, Esq. Acting Joint Magistrate, Kashepoor, to *H. B. Harrington*, Esq. Officiating Register of the Sudder Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter of the 21st of July, and of the 4th of September, and regret that an attack of illness has prevented my making an earlier reply to it. In consequence of the transfer of the revenue duties of the purgunnahs of Kashepoor into the collectorate of Bijnore, it is out of my power to refer to the records of the office, but during the period that I had charge, no instance came under my notice of landed property having been held under fictitious names; nor am I aware of the existence of any advantages for the continuance of a practice so irregular, and apparently calculated for none but fraudulent purposes. The penalty of the forfeiture of the and held under a fictitious name, appears to be the most efficient method of eradicating so objectionable a practice.

I have, &c.
(signed) *C. N. Fagan*,
Acting Joint Magistrate.

Kashepoor, Joint Magistrate's Office,
16 October 1837.

(No. 17.)

From *W. H. Benson*, Esq. Magistrate, Barelly, to *H. B. Harrington*, Esq. Register to the Court of Nizamut Adawlut, N. W. P. Allahabad.

Sir,

WITH reference to your circular letter under date 21st July last, forwarding copy of a communication from the Law Commissioners, dated 30th June, on the subject of holding lands in fictitious names, I have the honour to reply as follows to the questions therein propounded.

2. 1st. The practice of holding land in fictitious names does not, I believe, obtain in the district of Barelly, but that of holding lands in the names of children or dependants, though not uncommon, does not prevail to any considerable extent.

2d. Several circumstances appear to have led to the practice; the chief appears to be the desire to escape personal restraint and responsibility for Government balances; and in such cases near relations, especially the children of the real owner, to whom the property will eventually descend, are the persons in whose names the estates are registered: these are generally under age, or when adult, are sometimes resident in other districts, or in foreign territory, where no process can be served. The proverbial bad faith of the people is almost the only check to the extension of the practice of holding in the names of dependants, but is a most effectual one. The temptation of safety from compulsory process, by abandoning a menial, or a man of straw, to the consequences of default, would be too great,

great, were not instances before the eyes of principals of treachery on the part of dependants, especially after the death of their masters had deprived the widow or children of the means of checking the assumption of proprietorship by the exhibition of proof of right. The practice can hardly be said to have originated under our rule; the earliest regulations make provisions against leasing in fictitious names, on account of the injury likely to be sustained by the public revenue from it. The temptations to it must have been greater under governments guided by no written rules in the collection of their revenue; and the additional precaution of concealing the name of the principal must have been more rigidly attended to than now, when, unless he has become security, he cannot be molested on account of a balance.

3. The advantages are but slight to a punctual payer of the government revenue. It may occasionally happen that a tehsildar, influenced by ill-feeling towards an individual, may give unnecessary annoyance; but a judicious control on the part of the collector will always be a sufficient security against any arbitrary proceedings of this kind. On the other hand, the disadvantages militating against the punctual realization of the public revenue, where the practice may prevail to any great extent, are obvious; and where the principals may be officers, holding a public situation, and the fact of ownership may be concealed, the course of public justice may be obstructed from quarters which it might be difficult to ascertain in order to remedy the mischief.

4. Where the principal may be an officer of Government, and the purchase or registry may be made in a fictitious name, the principals concerned being designedly, or in effect, concealed, the forfeiture of the property would appear to be only a just punishment for a concealment, which would most probably be based on evil motives; but such a severe punishment does not appear to be called for in other cases, and a fine, leviable from the principal, under the rules applicable to arrears of revenue, would seem to be most proper. In all cases the difficulty of establishing the truth of the conclusion will be the great stumbling block. The matter should be determinable only in a civil court. Information should be, in the first instance, tendered to the revenue authorities, and on a report to the Board, and on the receipt of their sanction, the collector should be promovent in the suit on the part of Government.

5. As instances may exist where a purchaser of property may, from a desire to settle it on a particular person, in order to exclude others who might otherwise claim to succeed to such uninherited and acquired property, an exception might be made in their favour, it being provided that in all such cases the principal shall declare his intention, and shall register himself as security to be looked to primarily for the revenue during his lifetime, in the same manner as securities who may tenant or underfarm lands in the names of others are liable primarily for the rent of those lands.

I have, &c.
(signed) *W. H. Benson,*
Magistrate.

Barelly, Magistrate's Office,
7 October 1837.

(No. 11.)

From *F. P. Buller,* Esq. Officiating Magistrate, Shajehanpoor, to *H. B. Harrington,* Esq. Register Nizamut Adawlut, N. W. P. Allahabad.

Sir,

In reply to your circular letter, No. 783, dated 21st July last, enclosing copy of a letter from the Secretary Indian Law Commission, I have the honour to reply, that if by the term "fictitious names" are meant those of persons who have no existence at all, I am not aware that the practice alluded to is common in this district.

I have, &c.
(signed) *F. P. Buller,*
Officiating Magistrate.

Shajehanpoor Magistracy,
18 September 1837.

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(No. 383.)

From *R. N. C. Hamilton*, Esq. Officiating Commissioner, Second or Agra Division, to *H. B. Harrington*, Esq. Secretary to the Nizamut Adawlut, N. W. Prov. Allahabad.

Sir,

I HAVE had the honour to receive your letter, No. 783, dated 21st ultimo, conveying the desire of the court that I should furnish a report on certain points noticed in a communication from the Law Commissioners forwarded therewith, and in reply beg to state as follows.

The practice of holding landed property under fictitious names is not now common in the districts within this division, as far as inquiries enable me to form an opinion. Indeed it cannot be that an estate so held can escape detection in the progress of the professional survey and revision of settlement, unless a degree of inattention on the part of the European officer obtains which it is not possible can now exist.

The practice originated in some degree from the rules to repress the holding of lands by native officers, and also to the desire of acquiring undue influence through connexion with an office, which could not be obtained were parties holding office known to be proprietors of estates within the circle of their duties.

There are no advantages that I can discover, in a continuance of such fictitious holding.

I should hope to see the prohibition to hold lands withdrawn, for until it be considered that a man may be both a landholder and a servant of Government, I do not think either the fiscal or judicial administration can be open to every class of the community, and it is absurd to expect a man living on his estate with comfort, would sacrifice all this to become an officer of Government at a distance. I would propose that the penalty of dismissal be incurred, should it be proved that any officer had withheld the communication of his being possessed of land.

The superior local officers should be cautioned not to authorize every person holding estates to fill any office having jurisdiction over the pergunnah in which such estates may be situate, but beyond this I see no necessity for interference.

Amongst the many objections raised to our executive administration is, that it does not attach those residing under our influence to it, and that no native has any degree of interest in its success or failure. May not this be attributable to our not allowing those who are really respectable landowners and large proprietors, any degree of power, or the prospect of obtaining it for any useful purpose, without leaving their homes and going to a strange part of the country. I may observe, there scarcely is a magistrate who will not look to the zemindar of a village, and in some cases hold him responsible for what he is pleased to term "harbouring bad characters," notwithstanding the zemindar's inability to prevent the location, unless after a sacrifice of time and trouble, which in all probability would not gain for him any consideration.

The time I hope is not very distant when a wealthy and independent landed proprietor may be eligible to office, and exercise its powers within the circle of his influence, and thus whilst raised in the estimation of his community be able to promote their interests, and aid in a proper degree the executive administration of the country.

I have, &c.
(signed) *R. N. C. Hamilton*,
Officiating Commissioner.

Commissioner's Office,
Second or Agra Division,
14 August 1837.

(No. 157.)

From *J. S. Boldero*, Esq. Civil Judge, Agra, to *H. B. Harrington*, Esq Register to the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st July, with a copy of a letter from the Secretary to the Law Commission, under date June 30, containing four queries regarding lands held under fictitious names. To enable

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enable me to reply fully to those queries, I sent copies of them to each of the moonsiffs in my district, that I might avail myself of any information they might possess; and also because I considered they would be able to explain the feelings which induce respectable natives to hold land under fictitious names. Waiting their answers has caused this delay in replying to your letter under acknowledgment.

In reply to the first question, namely, "Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?" the replies of all the moonsiffs are, that the practice is not common.

In reply to the second question, namely, "When did that practice originate, and what were the circumstances that induced it?" I find that the origin of the custom cannot be clearly ascertained. That it existed under the native governments, but has become more prevalent since the British rule; this is to be attributed to the following circumstances:

Under the native governments the pen and sword offered the readiest channels to fortune and distinction; lands were held in less estimation than they now are; the landowners were more liable to injustice and oppression from the native aumils, and consequently few of the higher classes invested their money in the purchase of estates.

Since the introduction of the British rule, the purchase of villages has become a safe and advantageous mode of investing money, and this has naturally led to the native officers of Government (who are not allowed to hold villages in their own names) purchasing them in the names of their relations and servants. Many merchants and other respectable men adopt this plan to prevent their being personally subjected to the disgrace and annoyances which the native officers have it in their power sometimes to inflict on zemindars who may incur their enmity. This, and the liability to be summoned to the thanahs, tehsildars', magistrates' or collectors' courts, is the chief cause of respectable men holding lands under fictitious names.

Fathers also occasionally purchase villages in the name of a favourite child, to ensure his ready succession to the estate on the death of his parents, and also thus to leave him a larger portion than he would have been entitled to had he shared equally with his brethren in his father's patrimony.

In reply to the third question, namely, "Whether there are any advantages in the continuance of the practice; and if there be, what are those advantages?" I consider that the only advantages arising from the system are to the actual proprietors, who, whilst they reap the profits of their estates, are exempted from the many petty annoyances they might be subjected to by being openly and personally liable to be summoned to the different cutcherries in their capacity of landholders. This to persons extensively engaged in trade is a great and positive benefit. So far as Government is concerned, there is neither profit nor loss, the nominal landholder performing all the duties of a real proprietor, and the land being always liable to be sold for the realization of any defalcation in the revenue.

In reply to the fourth question, namely, "In case of it being determined to prevent the continuance of that practice, what provisions or law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?"

I have stated above that there are three classes of our subjects who hold lands under fictitious names.

1st. Relations or dependants of the native officers of Government.

2d. Merchants and other wealthy and respectable individuals.

3d. Fathers in the name of their children.

To put a stop to the first class holding lands under fictitious names, the surest mode would be to rescind all restrictions to their holding them in their own names. Give them the same facility of acquiring property which other individuals possess; let the sales to them be open and public; and any power which they may now possess of conniving at, or effecting fraudulent sales to their relations and dependants, will be destroyed. No other legislative enactment can, in my opinion, suppress the practice.

The practice of merchants and other wealthy and respectable individuals holding lands under fictitious names can only be suppressed by taking away the causes which render them unwilling to hold them in their own names. As these cease

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cease to operate, so will the practice decrease; no provisions of law can put a stop to the custom, so long as it is for the interest of this class of men to continue it. The third class are so few in number that they are scarcely deserving of consideration; if there is any evil in the system, as it relates to them, it may be safely left to its own cure.

I have, &c.

Office of Civil Judge,
Agra, 17 October 1837.

(signed) *J. S. Boldero,*
Civil Judge.

(No. 203.)

From *H. Swetenham*, Esq. Judge of Furruckabad, to *H. B Harrington*, Esq. Register Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, dated the 21st July last, with annexed copy of a letter from the Secretary to the Indian Law Commission, No. 29, dated the 30th June, relative to the practice of persons holding landed property under fictitious names, and to submit replies to the questions therein proposed.

Q. 1. Is the practice of holding property under fictitious names common in the provinces under the jurisdiction of your court?

A. It is.

2. If so, when did that practice originate, and what were the circumstances which induced it?

It prevailed previously to the introduction of the British Government. The practice has obtained to greater extent probably since the introduction of the British Government. Amongst the causes which induced the practice, I consider the following to have operated:

1st. The prohibition against Europeans to hold land, except under certain restrictions under the provisions of Regulation XIX. 1803.

2d. Illegal acquisitions of landed property by ministerial Government officers; to remedy which, Regulation I. 1821, and Regulation I. 1823, &c. were enacted.

3d. The heavy responsibility which attaches to landholders in matters of police; for instance, as regards proclaimed Ducoits, Regulation IX. 1808.

Neglecting to give information of, and harbouring bad characters, Regulation VI. 1810.

Ditto information of stolen property, Regulation I. 1811.

Ditto information of robbers, &c., Regulation III. 1812.

Ditto of murder, arson and theft, Regulation VIII. 1814.

Omitting to furnish dawks, Clause 5, Sec. 10, Regulation XX. 1817.

Not assisting to apprehend, Clause 10, Sec. 21, Regulation XX. 1817.

Not reporting suspicious persons, Clause 5, Sec. 73, Regulation III. 1821.

In the matters for which the above rules provide, and many other, fiscal as well as criminal, the local authorities, that is to say, the tuhseeldars and collectors, the tanedars and magistrates, have occasion frequently to summon the recorded zumeendars. Men of fortune or of family enter the names of their poorer relatives, friends, or domestics as the proprietor, to save themselves trouble, and to preserve their falsely-conceived dignity (izzul). Anticipated imposition of fines for neglect of duty may also have effect.

4th. Lands given to females are held sometimes under fictitious names, under the prejudice of divulging the ladies' names in public.

3. Are there any advantages in the continuance of that practice, and if there be, what are these advantages?

None.

4. In

On

4. In case of it being determined to prevent the continuance of that practice, what provision of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

On proof in court that a sale of landed property had been effected in a fictitious name, for which good and satisfactory cause cannot be shown, the sale to be liable to be annulled on repayment of the principal of the purchase-money; no interest allowed.

I have, &c.
(signed) *H. Swetenham.*
Judge.

Furruckabad, Civil Judge's Office,
2 September 1837.

(No. 46.)

From *A. W. Begbie*, Esq. Civil Judge, Mynpoory, to *H. B. Harrington*, Esq. Officiating Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

With reference to your letter, No. 783, under date the 21st July last, and its enclosure, on the subject of the tenure of landed property under fictitious names, I have the honour to submit the following observations:

2. Finding myself unable to reply to the 1st and 2d queries of the Law Commissioners without reference to the revenue authorities of the district, I transmitted a copy of the letter of the officiating secretary to the Law Commission to the officiating collector, with a request that he would furnish such information on the subject as the records of his office and his own observation might enable him to communicate, and I have now the honour to submit a copy of Mr. Tyler's reply, under date the 20th instant.

3. From the officiating collector's reply, it appears that the practice of holding lands in fictitious names was at one time prevalent in the district, but is now seldom or ever resorted to.

4. It is further stated that the custom of holding lands in fictitious names is of very old date, and that many of the talookdars and petty rajahs, from fear of the reigning power, generally entered their gomastah's names; and that on the acquisition of these provinces by the British Government, many villages were found to be thus held; and that the native officers of the courts of judicature have been also known to purchase villages and register the names of other persons, with a view to prevent their own names appearing as malgoozars.

5. The officiating collector considers the practice of holding lands in fictitious names to be decidedly objectionable, without any countervailing advantages. It should, however, be taken into consideration, whether the facility afforded by the existing laws to the real proprietors of evading the registry of their names, be not in one respect advantageous to the State, by inducing capitalists to connect themselves with land, who would not do so if they were made amenable to the personal processes issuing from the collectors and the tuhseeldars. Perhaps by affixing a heavier penalty than is already provided to fictitious registry, persons of this description would be altogether deterred from embarking their capital in land, and the evil created by the new enactment would do the State more injury eventually than at present arises from the practice which it was intended to repress.

6. Individuals purchasing lands at public sales in fictitious names are liable to the penalties prescribed in Sections 15, 18, and 19 of Regulation XI. of 1822; and by Section 41, Regulation XLII. of 1803, other penalties are prescribed for wilful omissions and misrepresentations regarding the succession to estates by private transfer; and the above cited enactments, coupled with the risk which the real proprietor necessarily incurs of being fraudulently supplanted by the nominal though registered malgoozars, are probably sufficient to prevent the practice of fictitious registry becoming inconveniently prevalent; and it is also to be hoped that if the practice originated, as stated (and I apprehend correctly) by the officiating collector, in distrust of the ruling power, the greater confidence reposed by the landholders in the justice and clemency of the British Government will gradually induce them to abandon a custom for which a necessity no longer exists, and which can never be resorted to without the risk of injury to themselves.

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7. No estate ought to be so highly assessed that, if falling in balance, and immediately advertised for sale, the sum bid for it would not suffice to cover the arrear. In the process of public sale, the Government have an engine of coercion unknown to the native rulers of the country; and when the threat of selling an estate fails to induce the proprietor (whether real or nominal) to make an effort to preserve his property, it may be presumed that either the estate is not worth holding on its present footing, or that the proprietor is incapable of managing it. In the first case, the proper remedy would be a reduction of the assessment; in the second the transfer of the property would be both equitable and desirable.

I have, &c.

Zillah Mymensing, 23 October 1837.

(signed) *A. W. Begbie*, Civil Judge.

From *E. F. Tyler*, Esq. Officiating Collector, Zillah Mynpooree, to *A. W. Begbie*, Esq. Assistant Judge, Zillah Mynpooree.

Sir,

In reply to your letter of 25th August, enclosing copy of correspondence of Nizamut Adawlut and the Secretary to the Indian Law Commission, relative to the practice of persons holding landed property under fictitious names, I have the honour to inform you that the practice above alluded to was at one time prevalent in this district, but it is now seldom or ever resorted to.

The practice is undoubtedly objectionable, and continually causes much delay and inconvenience to the revenue officers in their collections, as they generally have to call upon a person without property, while the real defaulter evades all the disagreeabilities of duress or attachment of their effects.

The custom of holding lands in fictitious names is of very old date; many of the former talookdars and petty rajas, from fear of the reigning power, generally entered their gomastahs' names; and on the British accession to these provinces, many villages were found to be held in gomastahs' names, also the omlah of the courts of judicature have been known to purchase a village, and enter some other person's name, to avoid his own name appearing as malgoozar.

I am not aware there is any law to force a man to register lands in his own name, although possessed of the same; nor would I recommend the forfeiture of lands held under fictitious names; but it would be proper to make some strictures regarding this point, and to put down the practice: all lawful owners should, after six months' notice, be made to register such lands, now held under fictitious names, in their own names, and that in default thereof a heavy fine should be imposed, which the collector might realize either by attachment of his personal effects or by sale of such lands.

I have, &c.

Zillah Mynpooree, Collector's Office, 20 October 1807.

(signed) *E. F. Tyler*, Officiating Collector.

(No. 39.)

From *J. Davidson*, Esq. Judge of Zillah Etawah, to *H. B. Harrington*, Esq. Register Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I have the honour to acknowledge the receipt of your circular letter, No. 783, under date the 21st July last, with annexed copy of a letter, No. 24, from the Secretary to the Indian Law Commissioners, dated the 30th of last June, and of your further letter, No. 1,018, of the 4th ultimo, requesting my immediate attention and reply to the subject of the former communication, an answer to which should, I beg to state, have been earlier submitted but for my absence from the district during the months of September and October.

2. So far as I have had the means of ascertaining the stated facts with regard to the first question proposed by the Law Commissioners, the practice of holding land in fictitious names would seem to be by no means common in this part of the country; I have observed it to exist, but in two kinds of cases; in the one, the object

object is a just one; in the second, clearly fraudulent; the first being where a parent has purchased estates in the names of his children, who are minors, with the *bonâ fide* intent that each estate becomes the property of the child in whose name it is bought; the second, where individuals involved in debt, in order to avoid the just claims of their creditors, transfer their estates, or purchase new ones, in and by fictitious names. No case has come within my own experience of native officers of Government holding lands under fictitious names.

3. With regard to the mode of preventing the continuance of the practice of holding lands under false names, under whatever circumstances originating, I conceive that in every case where the intent has been fraudulent, such as those of estates so purchased by officers of Government, or by parties being at the time of purchase or transfer, defendants in civil actions, or against whom decrees for money, or other property, have issued, the estate should be liable to forfeiture; and in cases where the object of the purchase has not been a dishonest one, that the purchaser, though a fictitious name, should be subject to a fine proportionate to the value of the property so purchased, which might at the same time be considered subject to all the legal liabilities both of the purchaser (that individual being proved) and of the person in whose name the estate is fictitiously held.

I have, &c.

Zillah Etawah, Judge's Office, (signed) *J. Davidson*, Judge.
2 November 1837.

(No. 154.)

From *W. H. Tyler*, Esq. Magistrate of Chuttra, to *H. B. Harrington*, Esq. Register, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st ultimo, this day received, and in reply, to give the following answers to the queries contained in the letter from the Law Commissioners which accompanied your letter.

Q. 1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. The practice was very general formerly, but is not so now; indeed it may be said to be almost extinct in the Mahratta district.

2. If so, when did that practice originate, and what were the circumstances that induced it?

The practice not being common, no detailed reply is here called for.

3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I am not aware of any advantages to be derived from the continuance of the practice.

4. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

It might be effected by a simple enactment, making the practice illegal, and rendering the parties subject to a fine.

I have, &c.

Zillah Chuttra, M. O. (signed) *W. H. Tyler*, Magistrate.
15 August 1837.

From *E. F. Tyler*, Esq. Officiating Magistrate, Zillah Mymensing, to *H. Harrington*, Esq. Register Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, under date the 21st July, forwarding copy of a letter from the officiating secretary to the Indian Law Commission, relative to the practice of persons holding landed property under fictitious names, and in reply, to make the following answer to the queries transmitted in the officiating secretary's letter.

1. There

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1. There can be but little doubt that the practice of holding lands under fictitious names in this country was at one time prevalent; but from the inquiries I have made, this practice in this district has never been carried to any extent, and that it is now seldom or ever resorted to.

2. The practice is undoubtedly objectionable, particularly in Malgoozaree estates; it continually causes much delay and inconvenience to the revenue officers in their collections, as they generally have to call upon a person without property, while the real defaulter evades and escapes all the disagreeabilities of undergoing duress, or an attachment of his effects.

3. The forfeiture of all lands held under fictitious names would undoubtedly have the desired effect, but perhaps such a measure may be considered too severe; however, after a certain period, the lawful owner should be made to register such lands as are now held in fictitious names in his own, and that in default thereof, a heavy fine should be imposed, which the collector might realize either by attachment of his personal effects or by sale of such lands.

I beg to apologise for not having made an earlier reply, but the fact is, I have been frequently called upon to visit the interior of my district within the last five weeks, and where I am now residing.

I have, &c.

(signed) *E. F. Tyler*,
Officiating Magistrate.

Camp Gowmurreah, Zillah Mynpoory Magistracy,
16 September 1837.

(No. 93.)

From *S. G. Smith*, Esq. Magistrate of Etawah, to *H. B. Harrington*, Esq. Register of the Nizamut Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, of the 21st July last, with enclosure, and in reply to inform you that I have no reason for supposing that any subordinate officers under my control, or any other individual, hold landed property secretly or under feigned names in this district.

I have, &c.

(signed) *S. G. Smith*,
Magistrate.

Zillah Etawah Magistracy,
12 September 1837.

(No. 314.)

From *G. F. Harvey*, Esq. Collector of Agra, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter to my predecessor, calling for the opinion of the magistrate of this district on the several questions submitted to the Court of Sudder Dewanny Adawlut, N. W. Provinces, by the Indian Law Commission "relating to the practice which obtains in this country of persons holding landed property under fictitious names," and in reply to state as follows:—

Q. 1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. As far as I am able to learn from a number of individuals who reside and and hold land in this district, I incline to the belief that the practice in question (called Ismi Furzi) had its origin long previous to the acquirement by the Honourable Company of these provinces. It appears to prevail in a less degree in this district than in parts of Rohilcund.

Bareilly

Bareilly and Cawnpore are, I am told, the districts in which such titles most generally exist. I append for the satisfaction of the court a list of estates held under fictitious names in the Agra district.

10 Hoozoor Tuhseel.
18 Futtehpore.
4 Futteabad.
7 Irradutnuggur.
16 Furrah Uhmere.
1 Bah Pinuhut.
2 Khundawlee.
9 Rherughur.
67

Q. 2d. If so, when did that practice originate, and what were the circumstances that induced it?

A. As stated above, I believe the practice to have been very commonly resorted to before our acquisition of these districts. Those whom I have questioned agree in stating that immediately upon our assuming the country, an increase to a great extent took place in the number of such titles, most probably from the uncertainty which possessed men's minds as to the nature of the rule to which they were in future to be subjected; but I believe that as the character of the British Government became known, it again fell into disuse.

Nearly every native from whom I have made inquiry, attributes its origin to the harsh measures to which landholders, and all others possessed of tangible wealth, were subjected under the native rule; the little dependence to be placed in arrangements with the then ruling power in matters of revenue, and the grinding cruelty with which, in many cases, the persons of the defaulters were made to answer for the failing in the purse.

There is abundant evidence of the severe treatment of defaulters under the native rule to justify this as the most natural explanation of this method of avoiding such consequences without entirely relinquishing a right to landed property, to be reasserted when the tyranny had passed over.

Q. 3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

A. The advantage from this practice in former days, is obvious; at present I am induced to think it is confined to the native ministerial officers of the country, who are prohibited from purchasing estates sold for arrears of revenue, and who become possessed in this way of that which legally they would be unable to attain.

The practice is, without doubt, considerably encouraged by the dread in which respectable zemindars are, of a summons to the magistrate's court to answer for and explain the cause of any disturbance which may occur in their immediate neighbourhood. I fear that the authority which the Regulations give to such calls by the magistrate has not always been used with a prudent regard for the inconvenience and trouble which it causes to people of respectable character, who are only blameable for not doing that which the police ought to have done, and who may have had no opportunity, or having it, may have not possessed the means of prevention. I know that the dread of these summonses operates powerfully to continue the custom called Ismifurzee.

Q. 4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

A. The practice is admitted on all hands to be falling into disrepute, and I believe no objection would be offered by the most concerned to an immediate enactment for its abolition, giving, of course, time for the change to be gradually effected.

I would respectfully suggest that in any enactment to this end, a clause should be inserted, allowing the large landholders to appear in the magistrate's court by attorney, and although it would not be politic at once to take away the power of calling in such person to answer for violences committed in the neighbourhood in which they reside, I would suggest that it be modified; that the particular offences committed in the neighbourhood in which they reside be named, on the occurrence of which a magistrate should be authorised to summon the parties not actually concerned,

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cerned, but who from their position may be supposed to be acquainted with the causes of the disturbances. In many cases a report by letter would answer all the purposes at present sought for; and if in it misstatements are found, the party forwarding it would justly incur the inconvenience of a personal attendance. I am inclined to think that in one year those titles to estates in this district now held under fictitious names, would, on a proclamation to this effect, be transferred to real names.

I have, &c.

Zilla Agra, Collector's Office, 18 October 1837. (signed) *G. F. Harvey*, Officiating Collector.

(No. 27.)

From *R. Lowther*, Esq. Officiating Commissioner, Allahabad, to *H. B. Harrington*, Esq. Register of the Court Sudder Dewanny and Nizamut Adawlut, N. W. Provinces, Allahabad.

Sir,

I have the honour to acknowledge the receipt of your circular, No. 783, dated the 21st July, with its enclosure, from the Secretary to the Indian Law Commission, relative to the practice of holding lands under feigned names.

2. I believe this practice is chiefly resorted to for the fraudulent purpose of evading the eventual execution of decrees of court. In the Cawnpore district, where the landholders have extensive dealings with the Mahjuns, fictitious transfers, are by no means uncommon; it was formerly the practice to grant a transfer of names on the personal acknowledgment of the parties concerned. I am, however, informed that within the last few months, upwards of 100 applications have been rejected by demanding from the transferring party a copy on stamped paper of the deed of sub-mortgage, or gift, under which the transfer was intended to be made. This precaution on the part of the collector, if generally adopted, would operate to a great extent in checking fraudulent transfers, because few people are willing to trust so far to their associates in fraud as to give them absolute power on the property.

3. I understand that Ismifurzee holdings are by no means uncommon among the officers of the civil courts. This may be accounted for either by the parties wishing to avoid the responsibility and inconvenience which attaches to the sudder malgoozar, or he may be desirous of concealing the fact that he possesses means of acquiring property beyond his legitimate savings. In either case I am of opinion that the preventive law cannot be too strict, and I would impose confiscation and dismissal from office as the penalty; it is a specific enactment only which can operate as a check and a warning.

4. These practices I believe originated with our rule, and have continued because they have never been formally interdicted; leases of a similar description may obtain in the revenue department, but I believe them to be less common than in the judicial branch of the service, but I would make no exceptions; the law with its penalties should be made to operate alike upon all.

I have, &c.

Commissioner's Office, 4th Division Allahabad, 11 September 1837. (signed) *R. Lowther*, Officiating Commissioner.

(No. 223.)

From *C. F. Thompson*, Esq. Zillah Judge, Cawnpore, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

Dewanny Adawlut.

I HAVE the honour to acknowledge the receipt of your letter, No. 783, under date the 31st of July 1837, with an accompanying copy of a letter to your address from the Secretary to the Indian Law Commission, relative to the practice which obtains in this country, of persons holding landed property in feigned names, in which you request me, by order of the superior court, to furnish a report

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a report of my opinion concerning the questions proposed in the accompanying letter.

I request you will inform the superior court that my answers to the questions proposed refer exclusively to the Cawnpore district.

The Indian Law Commission wish to be informed if the practice of holding landed property under fictitious names is common in the North-western Provinces, and what were the circumstances which led to its introduction.

The custom of holding landed property in feigned names has prevailed in the Cawnpore district since the surrender of the Ceded and Conquered Provinces to the British Government by the Nawab of Oude in 1803.

The circumstances which led to its introduction were these:—

1. The native officers in the establishment of the collectorship were prohibited from purchasing landed property, or at the Government sales, by Sec. 9, of Regulation XXVI. of 1803. These men, more particularly the dewans, head native officers of the collector's office, and the tehsildar, native collectors of the purgunnahs of the Cawnpore district, acquired large sums of money by fraud and extortion, and purchased estates sold by order of the collector, in the names of their relatives, connexions, or servants, or of imaginary persons whose names were invented for the occasion, with a view to evade the provisions of Regulation XXVI. of 1803, and to obtain a lucrative investment for their money, being from the nature of their employment accurately acquainted with the value of lands exposed for sale at the Government auctions for arrears of revenue.

Muhundar Narani, "dewan" of the collector's office in 1805, purchased Manza Purtulpoor, and other villages, in the name of his nephew.

Nasir Alli, "dewan" of ditto, purchased Monza Baopoor, and other villages, in the names of two imaginary persons, Mohummud Akbul, Mohummud Dowlut.

Ram Mohun Ghose, native of Bengal, tehsildar, purchased lands in the name of Mulmunny Dhut, his favourite monkey.

2. Native merchants have occasionally purchased landed property in the names of their "gomastahs," or head servants, in order to avoid the inconvenience and annoyance of being apprehended by the tuhseeldar's chupprassees, in the mofussil or the collector's at the Sudder station, and the contingency of being summoned to attend, and be detained in attendance at the magistrate's court, to answer complaints preferred by the mofussil police concerning want of co-operation, harbouring bad characters, &c.

3. Natives of Oude, more particularly servants of the Oude government, "chukleedars," "amils," &c. who have acquired large sums of money by corrupt and oppressive means, have purchased landed property in this district, in the names of their relatives and servants, with a view to conceal from the knowledge of the Oude government the real amount of their property, and to place their wealth beyond the control of that government.

4. Bankrupt merchants, shopkeepers, &c. have occasionally purchased landed property in feigned names, previous to a declaration of their insolvency, in order to defraud their creditors.

Q. Are there any advantages in the continuance of the custom, and what are they?

A. Native merchants, who hold landed property in feigned names, derive some advantage from the continuance of the custom, as they are enabled to devote their time and attention to their private business, without fear of molestation from the collector, magistrate, and police.

In case of it being determined to prevent the continuance of that practice, what provision of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

Should the Government, on the recommendation of the Indian Law Commissioners, determine to prevent, by a regulation, the continuance of the custom of holding landed property in feigned names, the following provisions of law would effect the object in an efficient and equitable manner.

The programme of the proposed Regulation is omitted, as the causes which led to the introduction of the custom of holding landed property

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property in feigned names may possibly be different in other zillahs and in Bengal.

It is hereby enacted, that it shall be unlawful for any native of India, Great Britain, or of foreign countries residing in the province of Bengal and the North-west Provinces, to purchase landed property in the feigned names of their relatives, friends or servants, from the date of the promulgation of this Regulation in the official Gazette, and that it shall be unlawful for any native of India, Great Britain, or of foreign countries, residing in the province of Bengal and the North-west Provinces, to hold in their possession landed property in feigned names, after the expiration of three calendar months from the promulgation of this Regulation.

Any native of India, Great Britain, or foreign countries residing in the province of Bengal, and the North-west Provinces, who shall purchase landed property in feigned names, or hold in his possession landed property in a feigned name, in violation of the provisions of this Regulation, specified before the civil judge of the zillah in which the estate held in a feigned name is situated, to pay a fine to Government not more than six months' Government rent of the estate held in a feigned name, and not less than three months' Government rent of the same.

The collectors of land revenue of the zillahs comprised in the province of Bengal and the North-western Provinces, on receiving information that any native of India, Great Britain, or foreign countries, resident in the province of Bengal or the North-western Provinces, shall immediately proceed to make inquiries concerning the charge, and in the event of the complaint appearing to them well grounded, shall institute a summary suit on the part of Government against the person or persons accused of transgressing the provisions of this regulation in the civil courts of their respective zillahs. The judges of the zillahs comprised in the provinces of Bengal and the North-western Provinces, are hereby directed, on the institution of a summary suit in their courts, by the collectors of land revenue, against any person or persons accused of purchasing or holding landed property in a feigned name or names, in contravention of the provisions of this regulation, to issue a notice to the defendant, and proceed to try the case summarily in the manner prescribed by the Regulations of Government generally, and in the event of the action entered by the collectors appearing to them just and well founded, to order the defendant to pay, in addition to the costs of suit, a fine to Government not greater than six months' Government rent of the estate held in a feigned name, and not less than three months' Government rent of the same.

I have, &c.

Zillah Cawnpore, 22 Sept. 1837. (signed) *C. F. Thompson*, Judge.

(No. 46.)

From *J. T. Rivaz*, Esq. Judge of Futtehpore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 782, of date the 21st of July last, transmitting the copy of a letter from the Secretary to the Indian Law Commissioners, No. 29, under date the 30th of June.

In reply to the first and second query of the Secretary to the Indian Law Commission, I beg leave to state that I am not aware that any judicial officer of this court holds landed property under a fictitious name.

In reply to the third query, I beg to submit, that only two advantages appear to me to accrue to the person who may hold landed property under a fictitious name, viz. that

that creditors may be defrauded, and dishonest gains concealed; of any honest advantages I am not aware.

In reply to the fourth query, I beg leave to submit my opinion, that in the event of the continuance of the practice being prohibited, a fine levied both on the real and nominal proprietor, the fine on the former to be peremptorily levied on the landed property, and that on the latter on any property forthcoming, would effect the object in contemplation.

I have, &c.

Dewanny Adawlut, Zillah Futtehpore, 1 September 1837. (signed) *J. T. Rivaz*, Judge.

(No. 92.)

From *S. Fraser*, Esq. Judge of Bundelcund, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st July last, calling for a report on the several questions proposed in a letter from the Secretary to the Indian Law Commissioners, relative to the practice of persons holding landed property under fictitious names.

In reply, I have the honour to state, that there are five descriptions of persons who adopt this practice in the provinces under the jurisdiction of this court.

1stly. The jageerdars of the neighbouring territory, who frequently hold lands in the name of their dependents, being unwilling to be brought individually into collision with the courts.

2dly. The natives of wealth and respectability in the provinces, who object to appear in person in our courts.

3dly. Hindoos of all classes, who hold lands in the names of different members of their family, wishing thereby to separate distinctly the property acquired by themselves from the joint claim of the other members of the family.

4thly. Subordinates of office, who adopt the practice with a view to evade the orders of Government.

5thly. Persons not subordinates of office, who similarly hold lands under fictitious names, with a fraudulent intent.

The practice has apparently originated with the introduction of our courts, and legislation in regard to it, excepting in cases when it is resorted to for fraudulent purposes, should, in my opinion, be adopted with great caution.

Where unobjectionable motives (as in the case of the first three classes mentioned) influence the parties, the power of a Government to interfere appears to be very questionable, since, as a general rule, all persons have a right to dispose of their private property in any way most agreeable to themselves; at the same time, the inconveniences and risk of the system, as concerns the first two classes especially, are a sufficient guarantee that it will cease when the grounds of objection which have given rise to it shall have disappeared or been removed.

In regard to the last two descriptions of persons, where fraudulent motives shall appear, I see no objection to declaring property held under fictitious names liable to forfeiture, nor do I perceive any other course by which an effectual check upon such proceedings can be exercised.

I have, &c.

Zillah Bundelcund, 3 October 1837. (signed) *S. Fraser*, Judge.

(No. 99.)

From *J. Dunsmure*, Esq. Judge of Allahabad, to *H. B. Harrington*, Esq. Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, with the annexed letter from the Indian Law Commissioners.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

2. In reply to the first question proposed by the Commissioners, I should say that the practice of holding landed property under fictitious names is not now common in this district. It did prevail to a great extent during the early part of our administration up to 1810, but since that period the practice has gradually declined, and at present may be said to have only a very partial existence.

3. In reply to the second question, I would observe that the practice is not invested with much antiquity, as it started into existence shortly after the cession of the district; many circumstances induced it. During the lax and feeble administration which immediately followed the cession, the rapid acquisition of landed property by all those connected with the fiscal management of the district, and more particularly by those who exercised a very pernicious influence over the executive officers, led the holders of estates to have recourse to the practice, for the purpose of screening their possessions. Thus the vast acquisitions made by the Nawaub Bokur Allee Khan, the Rajah of Benares, Deokunundune, and others, were registered in the names of their relatives and dependents. Another cause which operated, was the dislike of many to be subjected to the inconveniences of a system which involved the arrest of their persons. In the case of females being proprietors of estates, this practice did, and does now, almost invariably obtain. Again, individuals resort to this practice to defeat the just claims of their creditors.

4. To the third question I reply, that there is not a single advantage in the practice; on the contrary, it encourages fraud and bad faith, for families have been beggared by the dishonest conduct of those in whose names estates have been registered, merely from a repugnance on the part of the real proprietors to appear as the Government malgoozars. I entirely agree with those who recommend that all lands be declared liable to forfeiture, whether held by purchase or otherwise, under fictitious names. Even in the cases of female proprietors they should be required to have their names registered ; but in order to guard against personal annoyance to them, let the names of their managing agents be also recorded, who should be held responsible for all matters connected with the property.

5. In reply to the fourth question, I do not see the necessity for any provision of law, with the exception of that contained in the preceding paragraph in regard to lands held by females.

I have, &c.
(signed) *J. Dunsmure*,
Judge.

Dewanny Court, Allahabad,
15 September 1837.

(No. 557.)

From *J. C. Wilson*, Esq. Officiating Magistrate of Cawnpore, to *H. B. Harrington*, Esq. Register Sudder Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, of 21st ultimo, giving cover to a letter from the Secretary to the Indian Law Commission, No. 29, of 30th June last, and in reply I beg to state, with reference to the 1st question therein proposed, that the practice of holding landed property under fictitious names, though prevalent, is less common in these provinces than it is in Behar and Bengal, and that it is much more common in the collections and civil departments than in the criminal. I know of no instance of it among the officers at present attached to the criminal court of this district.

2. In answer to the second question, I beg to state that the practice originated from the hour at which these provinces were transferred by the Nawaub Vizier to the British Government, and the prohibition consequent thereon against certain classes purchasing landed property.

There are two classes of persons who purchase landed property under fictitious names in this district. One of them consists of the omlah of the courts. These parties, from the knowledge which they acquire through their official situations as to the capabilities of different estates, become desirous of purchasing those that were very profitable. The law prevented their buying them in their own names, hence arose the practice of purchasing landed property in fictitious names; and hence the various rascalities set on foot by the tehsildars and others, to cause the sale of coveted estates, date their origin.

4. The

4. The other class consists of wealthy men, who have acquired their money at Lucknow, in a manner that will not bear investigation. These men, so long as they remain in service, are anxious to prevent its being known that they are wealthy, and are at the same time exceedingly desirous to invest their gains in the British territories. Their agents purchase estates in their own names; and a case is now about to be instituted in the civil court by one of the parties alluded to against his agent, who purchased a very large estate, and inserted his own name in the collector's books, for not giving it up to him on his arrival at Cawnpore.

5. In answer to the 3d question, I can safely assert, that there are not only no advantages in the practice, but that it is vile in the extreme. Any person at the head of an office, who is aware that a certain estate is the possession of a certain officer under him, can easily be on his guard against the illegal efforts made to favour it. Whereas should the purchase, as is too often the case, have been made in a false name, his ignorance of the real purchaser may lead him into the wiles laid to deceive him.

6. In answer to the 4th question, I should say, that the best plan for putting a stop to the practice would be an order to every owner of an estate to avow himself within three months from a certain date, under a penalty of forfeiting the estate; that in future any one should be allowed to purchase landed property, provided he bought it in his own name, the penalty of transgressing the order to be forfeiture of the estate. It would then rest with judges, collectors, and magistrates to see that no moonsiff, tehsildar, or thanadar was appointed to act in a division in which his estates were known to be situated. The malpractices of the under-hand system, as fully proved by the numerous decisions of the late special commission, would cease; and those who had earned their money honestly, might invest it in the district that they preferred, without being driven to evade a law, which will never be observed but by European officers.

I have, &c.

Zillah Cawnpore, Magistrate's Office, (signed) *J. C. Wilson*,
Camp Muckunpore, 16 Aug. 1837. Officiating Magistrate.

(No. 7.)

From *H. Armstrong*, Esq. Magistrate of Futtehpore, to *H. B. Harrington*, Esq. Register of the Sudder Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of the Court's circular letter, No. 783, of the 21st July last, and in reply, to submit a report on the questions referred to in the letter from the Secretary to the Indian Law Commission.

2. The practice of purchasing and holding landed property under fictitious names does not in the least prevail in this district. It is customary for a parent to purchase an estate, and to have his son recorded as the proprietor of it, although the latter may never receive possession or derive any advantage from the property until the death of his father; but such a tenure can hardly be considered a fictitious one; and as the practice, as far as I have been able to observe, is not attended with any disadvantage, I am not aware of any argument for its abolition. Where the system of holding lands under fictitious names is common, it may be presumed, it is with the view of acting fraudulently. Under such circumstances, the practice should be put down by law, and the only provision which would most surely effect that object would be to render such tenure liable to forfeiture. I have not been able to learn when the practice originated.

I have, &c.

Futtehpore, Magistrate's Office, (signed) *H. Armstrong*,
12 September 1837. Magistrate.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

(No. 783.)

From *J. Lean*, Esq. Acting Magistrate of Humeerpore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny and Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to submit answers to the four questions regarding the practice of holding landed property under fictitious names, contained in the letter of the Secretary to the Law Commissioners, dated 30th June, and forwarded with your circular letter, No. 783, of 21st July last.

Q. 1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. The following memoranda will show the number and description of landed tenures in which a holding under a fictitious name is suspected in this district; there are probably many more, but these only have come to my notice:

1st. Estates held by purchase at public sales, on account of decrees of court and revenue balances - -	6
2d. Ditto held by private purchase - - - -	43
3d. Ditto held in farm (mustojiers) - - - -	37
4th. Ditto held by hereditary descent - - - -	19
TOTAL - - -	105

The total number of estates in the district is 904, so that there is a fictitious holding in one of every nine. By the word holding, possession must not be understood in every case; for instance, in several of the above-mentioned estates neither the actual proprietors nor their fictitious representatives are in possession, the estates having been let in farm, but the names of the fictitious representatives are still registered as proprietors.

Q. 2. If so, when did that practice originate, and what were the circumstances that induced it?

A. I have no means of exactly determining when this practice originated, but the following appear to have been the causes which led to the fictitious holding in the estates as above classified:

1st, 2d, and 3d class.—1. The hope of avoiding the annoying responsibility in police matters which attaches to the registered proprietor:

2. The hope of avoiding attachment and sale of real and personal property, and imprisonment, in the event of a balance occurring; thus, in fact, making the estate alone answerable, either by sale or farm, for the government revenue.

4th class.—1. The above two causes, striking out the word "sale" in the latter:

2. The wish to avoid giving security for their farming leases. The farmer in this district generally gives five per cent. on his lease to a neighbouring zemindar, who in return pledges his estate as security. To avoid this, a man of substance puts forward a creature of his as a farmer, and becomes security himself, thus conforming to the letter, though not to the spirit of the revenue rules:

3. The wish of an independent chief on taking an estate in farm, to avoid the indignity of having his name registered as a malgoozar of another government. This is, of course, peculiar to a district like this, which is surrounded by and intermixed with independent territory.

Q. 3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

A. I can conceive no possible advantage in any of the cases given in the answer to the last question.

Q. 4. In

A. In

Q. 4. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

A. In the case of proprietary tenures, either by public sale, private sale, or hereditary descent, the law should provide that if all such fictitious tenures were not declared within a certain period to be given, the penalty of fine, attachment, or confiscation should be incurred.

No legal enactment appears necessary as regards farming tenures, as the collector himself, in making the settlement, can always prevent, if he chooses, any such fictitious arrangement.

I have, &c.

Humeerpore, Magistrate's Office, 30 September 1837.

(signed) *J. Lean*, Acting Magistrate.

(No. 226.)

From *W. S. Donnithorne*, Esq. Officiating Magistrate of Banda, to *H. B. Harrington*, Esq. Register to the Nizamut Adawlut, N. W. P. Allahabad.

Sir,

In reply to your letter, No. 783, of the 21st ult., with enclosure, containing the four queries of the Indian Law Commissioners, I have the honour to send you the following answers.

1 & 2. That I believe the practice of holding landed property under fictitious names on the part of subordinate judicial officers is not common in the North-western Provinces; nor is there reason, that I know, why any concealment should be useful to them, as they (unlike revenue subordinate officers, by Section 14, Regulation XXV. of 1803) are not prohibited by any enactment from holding lands in their own names.

3. I am not aware that there are any advantages or disadvantages to the public or to government in the continuance of the practice, as to subordinate officers of the criminal courts, nor indeed of the Civil Department, unless sudder ameens or moonsiffs be reckoned subordinate officers; they, and in general any who have the decision of civil suits respecting real property, should not perhaps be allowed to possess any interest, either direct or indirect, in landed property, situate within the limits of their own jurisdiction.

4. To prevent the continuance of the practice (if thought necessary), I would recommend that the mere possession of lands situate within the jurisdiction of the office to which subordinate officers were attached (or their own jurisdiction in the case of sudder ameens and moonsiffs), in whosoever's name they be held, should be considered a disqualification for office, unless such landed property, clearly defined, had been specially allowed to be held; and in cases in which any deceit or concealment had been practised, either at or after appointment, the offender should be subjected to fine and imprisonment, or only imprisonment, in the same manner and to the same extent as for bribery or other malversation in office.

The forfeiture of the lands seems to me, as a general rule, to be both too arbitrary and severe a measure for the present enlightened times, and also calculated, in the case of there being a copartner not in government employ, either to involve the comparatively innocent with the principal in guilt in a similar punishment (if the whole of the lands should be forfeited), or (if only the offender's share should be declared forfeit) to allow the offender to escape with impunity.

The difficulty of determining, under any circumstances, the individual rights and interests of two putteedars or partners in any particular land is well known to the Court; how much would that difficulty be increased when both parties had an equal interest in concealing the truth, and were perhaps leagued together to defeat the inquiry!

With respect to the holding of lands on the part of others than subordinate judicial officers (to which your letter and enclosure seem also to refer) in fictitious names, I beg to observe,

1st. That I believe that the practice is very extensively prevalent;

2d. That it is coeval, or nearly so, with the present government, and is in some degree caused by the proprietors being desirous of being free from all direct responsibility

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Respecting Lands held under Fictitious Names.

responsibility as to revenue and police matters, and from the consequent annoyance often received from tuhseeldars and thanehdars, from the dustuks of collectors and summonses of magistrates;

3d. That these are some of the advantages which they gain, and I know of no inconvenience or loss to the government or the community arising from the practice;

4th. That I do not think it possible to prevent this practice by any enactment, consistent with the justice and moderation for which the British Government has been always distinguished. Every person should surely have the power to give, *bona fide*, or commit in trust, his estate to any one he please.

I have, &c.

Zillah Banda, 14 Aug. 1837. (signed) *W. S. Donnithorne*,
Officiating Magistrate.

(No. 350.)

From *E. Morland*, Esq. Joint Magistrate of Allahabad, to *H. B. Harrington*, Esq. Register to the Sudder Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter of the 21st of July, together with copy of a letter from the Secretary to the Law Commission, asking certain questions respecting the custom of holding landed property under feigned names.

In reply, I beg to state that the custom does not prevail to any very large extent in this district, and might be easily checked altogether, by declaring by law that after a certain period such property should be forfeited to government.

I have, &c.

Magistrates' Office, Zillah Allahabad, 20 September 1837. (signed) *E. Morland*,
Joint Magistrate.

(No. 22.)

From *F. Currie*, Esq. Commissioner for the Benares Division, to *H. B. Harrington*, Esq. Register, Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, dated 21st ultimo, with its enclosure.

2. It is very seldom that the fact of a person holding land under a fictitious name has come under my cognizance as commissioner of circuit, and that only in cases of dispossession, as described in Regulation XV. 1824; the origin of the practice in all which seems to have been the prohibition which hitherto existed to Europeans, employed in the cultivation of the indigo plant, &c. holding land in their own names.

3. As far as my experience goes, I cannot say that I have discovered any inconvenience to police arrangements, or detriment to the interests of the state, or individuals in the department of criminal justice, from the existence of the practice.

4. Should it be deemed expedient to put a stop to the practice, I imagine that it would only be necessary to declare it illegal, and that persons holding lands under fictitious names shall not be able to sue or defend suits relative to occupation of, or forcible dispossession from such lands, in the Foujdarry Court.

5. The prevalence of the custom is, I believe, not unknown to the revenue authorities, and the judges of the civil courts, to which departments the Law Commissioners have doubtless referred for information and opinions.

I have, &c.

Commissioner's Office, 5th Division, Ghazeepore, 16 August 1837. (signed) *F. Currie*,
Commissioner.

ABSTRACT.

Acknowledges letter of the 21st ultimo, with its enclosure, and communicates observations and opinion regarding the practice which exists of persons holding land under fictitious names.

(No. 36.)

From *F. Currie*, Esq. Commissioner for the Fifth or Benares Division, to *H. B. Harrington*, Esq. Register to the Court of Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

IN accordance with the instructions contained in your letter, No. 1080, dated 8th ultimo, I have the honour to send you a more general reply to the questions put by the Law Commissioners relative to the practice of holding lands under fictitious names.

Reply to 1st question.—The practice is not very prevalent, but exists to a certain extent.

Reply to 2d.—Partly from rajas and persons of rank and family considering it derogatory to them to have their names recorded as proprietors, and being desirous to avoid the personal process in case of balance of revenue, which the record of their names as proprietors would involve; and partly owing to the Regulations heretofore in force, which prohibited Europeans holding lands in their own names.

Reply to 3d.—None; but in the case of rajas and others, it is unobjectionable, as the estate is, or ought to be, sufficient security for its revenue.

Reply to 4th.—I imagine it would only be necessary to declare the practice illegal, and that persons holding lands under fictitious names shall not be able to sue or defend suits relating to such lands, either themselves or by proxy, in the courts of judicature; or be competent to convey a valid title in transfer of such property.

I have, &c.
(signed) *F. Currie*,
Commissioner.

Commissioner's Office, 5th Division,
Ghazeepore, 19 Oct. 1837.

ABSTRACT.

Acknowledges letter of the 8th ultimo, and forwards replies to the questions relative to the practice of holding lands under fictitious names.

(No. 193.)

From *W. Jackson*, Esq. Judge of Goruckpore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, Allahabad

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, of the 21st July 1837. Civil Department.

2. Agreeably to the orders therein contained, I subjoin my answers to the several questions of the Law Commissioners regarding the practice of using fictitious names in the transfer of property.

Answers.

A. 1. The practice is common here, but not so much so as in other parts of India where I have been employed, Behar and Allahabad, for instance.

A. 2. The object in using a fictitious name is undoubtedly concealment. During the native governments the practice was very unfrequent, although as every rich man was liable to extortion in proportion to his riches, it was his object to conceal the extent of his property as far as possible; the same object now exists with regard to native officers of government or others who have obtained property in an illegal manner, and are desirous to conceal the acquisitions from the government; persons who have by corruption obtained a large property generally register it, or have the title-deeds drawn up in the names of their relations; when Europeans

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Respecting Lands held under Fictitious Names.

peans were not allowed to hold lands, indigo planters generally had their engagements with cultivators drawn up in the names of their gomastahs. There is, however, another and more legitimate object which some have in view: persons wishing to settle property on their relations and friends, purchase it in their names, the nominal purchaser being often a minor. There are some difficulties in effecting gifts of property, both under the Hindoo and Mussulman law; and they can only be effected under certain restrictions and formalities, which render the transfer subsequently open to legal attacks, and it is far easier to prove a simple document of sale in a court, than that the prescribed formalities, or a deed of gift have been observed, and that it is not invalidated by the legal restrictions.

A. 3. I know of no advantages at present in allowing such a practice to exist, excepting the convenience of making settlements of property or gifts, as above mentioned; these arise from peculiarities, perhaps defects in the law, which might be remedied in a more regular manner by removing the inability to alienate; at all events, as the Hindoo and Mussulman laws regarding property form part of the religion of the people, they should put up with the inconveniences attending them, as long as they profess those religions. Christians have long laboured under certain disabilities in this country; these have lately been done away. The object of concealing ill-gotten wealth is not a legitimate one, and the sooner the means of doing so are removed, the better, especially now that natives are admitted to offices of high trust.

A. 4. I see no sufficient reason for allowing the practice to continue, and would fix a day, after which no purchases made in fictitious names should be valid; but of course the law could have no retrospective effect. I look on the practice as conducive to concealment of fraud, and can see no reason for concealment of fair and honest transfers; if the actual law regarding the transfer of property is so bad that such a legal fiction is necessary to enable a proprietor to make a transfer which is open to no reasonable objection, the law should be amended in a more simple and regular manner; great difficulty in ascertaining the real meaning of a deed, continually occurs in the courts of law from the use of ficticious names, and I know of no adequate advantage arising from it, that should induce the government to allow of its continuance.

I have, &c.
(signed) *W. Jackson,*
Judge.

Dewanny Adawlut, Zillah Goruckpore,
4 September 1837.

(No. 34.)

From *A. C. Heyland,* Esq. Judge of Azimghur, to *H. B. Harrington,* Esq. Register to the Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, of the 21st ultimo, relative to the practice of persons holding land under fictitious names.

2. In reply, I beg to state that such practice is by no means so common in this district as in most others; in fact, since the late settlement, when the name of each landed proprietor was so prominently brought forward, and since the late Act allowing British subjects to hold land in their own names, there are but very few instances, I consider, remaining. In addition to which, there are no wealthy and independent zemindars, such as in Bengal, who, from the dread of being called into court, hold their lands under fictitious names, or have them registered in those of their servants.

3. There cannot be, I conceive, any public advantage from persons holding their lands under fictitious names, and the prohibiting such practice would give general satisfaction; and the Court of Sudder Dewanny Adawlut cannot but be too well aware of the innumerable advantages to be derived from its discontinuance, without entering into the detail of its benefits. The private advantages I consider to be almost all of a fraudulent nature, with the exception of natives of high rank and caste, who would dislike being rendered liable to the responsibility to which zemindars are by the Regulations.

4. There

4. There would not, I conceive, be any injustice in declaring such a practice to be in future illegal, and in the event of its being brought to the notice of the collector, that such land should be liable to confiscation, with the sanction of the Governor-general in Council; that should the holder of such land be a judicial or ministerial officer of government, that he should be dismissed from office; and further, that in the event of its appearing that such lands were so held with a fraudulent intent, that the holder should be further liable to fine and imprisonment.

5. Ample provision and security should, however, be allowed to zemindars who wished to be released from their responsibility, by appointing a proper agent.

I have, &c.

Dewanny Adawlut, Zilla Azimghur, 22 August 1837. (signed) *A. C. Heyland*, Acting Judge.

(No. 137.)

From *D. B. Morrieson*, Esq. Judge of Jaunpoor, to *H. B. Harrington*, Esq. Register, Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, under date 21st ultimo, and to refer the Court to my opinion relative to the practice which obtains in this country of persons holding landed property under fictitious names, forwarded from Benares, as magistrate and collector.

I have, &c.

Zillah Jaunpoor, 26 August 1837. (signed) *D. B. Morrieson*, Judge.

(No. 229.)

From *H. H. Thomas*, Esq. Judge of Mirzapore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

IN compliance with instructions conveyed in your letter of the 21st July last, I have the honour to submit my sentiments on the several questions proposed by the Law Commissioners, relative to the practice of persons holding landed property under fictitious names.

2. I have no reason to suppose that this practice of holding lands under fictitious names is less common in the district of Mirzapore than in other parts of British India.

3. It would be difficult to state with accuracy when it originated, but it may be traced up to the times of Mr. Jonathan Duncan's settlement; and I am informed that the practice prevailed even under the native governments. As for "the circumstances that induced it," they must have been as various as the motives of individuals who had recourse to it, but that the main object was deception, I should think, scarcely admits of a doubt.

4. I cannot call to mind the slightest advantage which this extensively mischievous practice possesses; on the contrary, the total abolition of it appears to me likely to lead to most wholesome and beneficial results. I am not required to specify the disadvantages; and indeed it would be superfluous at this late period, when the records of our courts may furnish such abundant proof of its having encouraged bad faith, constant litigation, escape from responsibility, and eventual wrong.

5. I protest it does not occur to me why proprietors or holders of lands should conceal their real names, except from a fear of disclosing some dark transaction, or with the prospect of achieving some remote piece of villainy. The practice seems altogether unnecessary; for in event of individuals being unable to superintend their estates in person, they can always provide for their management by power of attorney, which is an open and intelligible process, whilst the fictitious

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tious system drags with it all sorts of inconveniences, and is objectionable in every respect. If the government determine to prevent the continuance of this practice, the provisions of the law should affect, not only native officers of government, but all persons whatever; and I am of opinion that, in framing them, no great tenderness is expedient. The practice itself being vicious and universal, the prohibiting law should be strict and absolute; and forfeiture should be declared the penalty of its infringement.

I have, &c.

Dewanny Adawlut, Mirzapore, 14 September 1837.

(signed) *H. H. Thomas*, Judge.

(No. 169.)

From *G. Mainwaring*, Esq. Judge of Benares, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour, in compliance with the instructions conveyed in your circular letter, No. 783, under date the 21st ultimo, to submit herewith my replies to the several queries contained in the accompaniment to your letter under acknowledgement, on the subject of persons holding lands under fictitious names.

1. The practice of holding lands under fictitious names within the jurisdiction of this court is, I am led to believe, very common.

2. It has always been so, and the practice, I am informed, prevailed previously to the acquisition of this province by the British Government. The present inducement to the practice is frequently of a fraudulent nature, viz. that by the property in question being purchased, and held in the name of a servant, or dependent relation, it may be exempted from the grasp of creditors. Many estates too have been purchased, or are held under fictitious names, by the class of natives prohibited from becoming landholders by Section 15, Regulation V. of 1795; and though by that law the discovery of the practice subjects them to the penalty of forfeiting the property to government, and though special Commissioners have been nominated under Regulation I. of 1821, to bring such transactions to light, it must be presumed that the profit attendant on the illegal practice is sufficiently great to induce individuals to continue it at all risks, since it is a matter of notoriety that it still prevails.

3. I am not aware that any advantages can accrue to government by the continuation of a practice at once illegal and of fraudulent tendency.

4. I am not prepared to specify any rule that would effectually put a stop to the practice, but I think that if the penalty specified in Section 15, Regulation V. of 1795, was made generally applicable to individuals purchasing at sales under other names, and if all persons now holding lands benamee, were required within a certain period to come forward and register the proprietary right in their own names, under the penalty therein specified, it would have the effect of considerably checking the practice, and, as far as I can see, without any risk of injustice to individuals.

I have, &c.

Dewanny Adawlut, City of Benares, 17 August 1837.

(signed) *G. Mainwaring*, Judge.

(No. 265.)

From *E. P. Smith*, Esq. Judge of Ghazeepore, to *H. B. Harrington*, Esq. Register to the Court of Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, dated 21st July, with its enclosures from the secretary to the Indian Law Commission, proposing certain questions on the subject of fictitious transfers of land, and in reply to submit the following observations:—

Reply

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Reply to Question 1.—The word fictitious, as applied generally to transfers of landed property, admits of two constructions, which must be separately considered.

First. If by fictitious we are to understand imaginary, or absolutely now existent, then I apprehend the practice of purchasing and holding landed property, in a name without an owner, is of very rare occurrence, for obvious reasons.

But secondly, taking the word in its other sense of false, or not genuine, as for instance, when a feigned name, *i. e.* the name of a person possessing no interest or right in the matter, is purposely substituted in lieu of that of the real party to a transaction, the practice adverted to is known to be very prevalent in public as well as in private transfers of real property. There is, however, a third description of sale, by no means uncommon in this province, differing indeed essentially from both the foregoing, but still liable from its resemblance to be confounded with them, I mean the purchase of land in the name of a son or relative during the purchaser's lifetime, for his or their exclusive benefit, or otherwise as the case may be, but avowedly and openly made, without any attempt at concealment. Transactions of this character, though not embraced in the inquiries of the Law Commission, appear deserving of notice, as intimately connected with the general question of modifying the law.

Reply to Question 2.—In regard to the origin and the causes which led to the adoption of the practice in question, there is little doubt that, under the native governments of India, it was by no means so common as under our rule, and for this simple reason among others, that in those times, when might was right, and the end was considered to justify the means, the mere cloak of a dependant's name appearing on the rent-roll could afford to the real proprietor little or no protection against the tax gatherer's coercive measures. Their operation was generally brought to bear upon the *bonâ fide* possessor of the property, or such of his connexions as might happen to fall into the great man's power, without much attention to names and records, thus defeating the main object of concealment.

A mode of proceeding so arbitrary and off-hand, did not, however, square with English notions of justice and good policy, and consequently the introduction of our rule gave birth to a new system, the main principle of which was to recognise as the real proprietor the person ostensibly borne upon the record, and accordingly the law, in its anxiety for the liberty of the subject, insures exemption from coercive process to every one save the party actually under engagements to government, even in cases when the fact of private connexion or partnership may be matter of notoriety. The same reasoning applies with equal force to the landholder's obligations and liabilities in regard to matters of police and the maintenance of public order. The mere chance of being required to appear in person before a court of justice to answer for the misdeeds of agents or dependants, the being subject to the caprice and demands of local police officers on every trifling occasion of real or pretended disturbance, to say nothing of other annoyances incident to the possession of wealth and station in a country where discretion has so wide a range, and the well-being of society depends so much upon the personal character of the man in authority, are, with the native of rank, considerations quite sufficient to account for the frequent resort to the practice under discussion; and so long as prejudice maintains its sway, and public spirit is at so low an ebb, they will continue to produce a similar result, unless put down by law. The mainspring however of this mischievous system may be attributed to the causes so fully detailed in the preamble of Regulation I. 1821, a state of things which naturally resulted from the great power and confidence reposed in the government native officers on the one hand, combined with the ignorance of the owners of the soil on the other. It is a well-known fact that no zilla in the province of Benares is without its two or three great families, wealthy, powerful, and according to native notions, respectable, whose history, if inquired into, would show how much they were indebted for the acquisition of their property to undue influence and intrigue.

Reply to Question 3, namely, What are the advantages to be expected from a continuation of the practice?—I am of opinion, that, like a monopoly, the benefits are all on the side of the few at the expense of the many; and moreover, that those benefits are highly pernicious in their effects upon the welfare of the community at large, by being in many cases perverted into a licence for the perpetration of fraud and dishonesty with impunity to the designing rogue, and to the injury and prejudice only of the ignorant and unsuspecting. Thus, for instance,

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instance, the fraudulent debtor takes advantage of this facility of substituting one name for another in the documents and title-deeds which he has occasion to bring into court, to evade all risk of personal inconvenience arising from arrest and imprisonment; while it is no unusual thing in public sales, in execution of decrees, for a defendant to hire a man of straw, willing for a trifle to incur the penalty of a month's imprisonment, awarded by law for failure in making good the purchase-money, merely for the purpose of delaying the sale. This is a device which has more than once been successfully practised in my own experience; and according to my idea, affords a strong argument in favour of imposing some more severe legal penalty than at present exists. In a word, I consider the practice in question not only wholly indefensible, but attended in its practical results with nothing but unmixed evil, both as regards the interests of the State and the welfare of society; and I am confident that the interference of the Legislature to check its future progress would be hailed with joy by the great majority of the people.

Reply to Question 4.—In the event of its being determined to prohibit the practice, I do not see how the object could be more effectually and conveniently attained than by the enactment of a law rendering all lands liable to forfeiture which may hereafter be purchased under fictitious names by any parties, whether native officers of government or others; and also requiring all parties at present holding landed property under fictitious names to appear before the collector within a specified period (say six months), and give in a true and faithful statement of the *bonâ fide* proprietor's name and condition, under the penalty of forfeiting all right and title to any property so illegally held subsequent to and in contravention of the said law.

I would not, however, advocate any legislative interference whatever with the liberty of any person to dispose of his property, or make purchases in the name or names of his sons or near relatives, provided the act was free from concealment and disguise. This species of conveyance is not open to the objections above noticed, and is recommended by the following considerations:

1st. The power of selecting the best person to manage an estate and protect the interests of the family.

2d. The opportunity thus afforded of bringing forward a young expectant, and making him familiar with the management and value of the property, to the enjoyment of which he will sooner or later be entitled by inheritance.

I am, &c.

Zillah Ghazepore, (signed) *E. P. Smith*,
4 September 1837. Judge.

From *E. A. Reade*, Esq. Judge of Goruckpore, to *H. B. Harrington*, Esq. Register, N. A. N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of date 21st July, with its enclosures.

2. In this district it should be noted that there are 10,273 villages. This is an unusual number, and arises from the great extent of the district, and the generally small area of the properties comprised in it. I do not think, with reference to the first query, that the practice of holding lands under fictitious names is so common in this as in other districts of these provinces; because the great extent of forest and waste has given abundant opportunities for the creation of estates, and because ample encouragement has been given to all classes of the people to occupy, whether servants of the State or other people.

3. At the commencement of our rule in this district, the native officers were allowed to practise flagrant imposition, and the great majority of cases of properties held under fictitious names occurred in those days. The practice was resorted to for concealment sake, but in other cases it has obtained from other motives. A native officer who had savings to invest in land chose to insert the name of a relation, because it was his intention after his decease that the property acquired by his own success should descend to that individual, and not be left to be litigated for by other relatives, whose only claim upon him and his arose from affinity by birth. In some cases the names of others were registered, because in case of a revenue balance, or an occurrence on the property calling for

for the interference of the police, the rentholder dreaded a personal responsibility.

4. I do not see any advantages from the practice, except, as in the last case but one noted above, it may have the effect of stopping litigation.

5. No other provision of law appears to me to be requisite than the introduction of a rule, that all those persons, servants of the State or others, who acquire by gift, deed of sale, mortgage, &c., properties, whether for a limited time or permanently, have the opportunity of registering the name of whom they please, but at the time of registering must honestly record the acquisition by whom, either in person or by attorney.

I have, &c.

Goruckpore Collectorship, 3 October 1837. (signed) *E. A. Reade*, Collector.

(No. 320.)

From *R. Montgomery*, Esq. Acting Magistrate of Azimghur, to *H. B. Harrington*, Esq. Register to the Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to reply to your letter of 21st ultimo, transmitting certain queries from the Secretary of the Indian Law Commissioners relative to persons holding landed property under fictitious names.

Q. 1. Is the practice of holding landed property, &c. &c.?—The practice of holding landed property sold in execution of decrees of court under fictitious names was more common than it now is during the time British subjects were prohibited from holding lands in their own names. The persons who chiefly hold lands now in their own names are the native omlah and their relatives. The custom is not, however, very prevalent; and where it does exist, it is chiefly with regard to lands sold in execution of decrees of court. Only two villages have been sold for arrear of revenue during the last 12 years in this district.

Q. 2. If so, when did that practice originate?—It originated since the framing of the different regulations prohibiting the native omlah from purchasing estates sold for arrears of revenue; but this appears to be a mistaken idea as regards sales in execution of decrees of court, which do not appear to be prohibited.

Q. 3. Are there any advantages in the continuance of the practice, &c. &c.?—None whatever; on the contrary, it leads often to a great deal of litigation afterwards.

Q. 4. In case of it being determined to prevent, &c. &c.?—I think the best preventive would be to pass a law declaring that the person in whose name the estate was purchased should be acknowledged as the proprietor in case of any litigation on the subject.

I have, &c.

Zillah Azimghur, 15 August 1837. (signed) *R. Montgomery*, Acting Magistrate.

(No. 136.)

From *C. R. Tulloh*, Esq. Magistrate of Jaunpore, to *H. B. Harrington*, Esq. Register of Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular, No. 783, dated 21st ultimo, received this day, annexing copy of a letter to your address from the Secretary to the Indian Law Commissioners, dated 30th June, relative to the practice of persons holding lands under fictitious names, and to reply as follows:

1st. The practice of holding lands under fictitious names exists in this district, but to what extent it is impossible for me to say, but I do not think to any great extent. Previous to the enactment of the Act authorising Europeans to hold lands in their own names, the practice was much more common, as Europeans bought and held lands in the names of others, very often in the name of one of their domestic servants.

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2d. I cannot say when the practice originated, or what were the circumstances that induced it, but I suppose the practice has been in existence for many years, and the cause of it, the Regulations in force preventing Europeans and subordinate native officers from holding lands in their own name.

3d. I am not aware what advantages accrue from the continuance of the practice.

4th. This is difficult to determine, taking into consideration the great secrecy under which lands are held in fictitious names, and the difficulty in proving such to be the case; but on the whole, I think forfeiture of the lands, and a heavy fine imposed on the person or persons in whose names the lands are fictitiously bought, registered, and held, would in a great measure put a stop to the practice.

I have, &c.

Zillah Jaunpoor, 12 August 1837. (signed) *C. R. Tulloh*,
Magistrate.

From *W. H. Woodcock*, Esq. Magistrate of Mirzapore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, dated the 21st July last, and accompanying copy of a letter from the Secretary to the Indian Law Commissioners, No. 29, under date the 30th June 1837, relative to the practice of persons holding landed property under fictitious names.

2. The practice of holding lands under fictitious names is as common in this district as in any other.

3. The custom has arisen in several ways:

1st. Servants of government have made purchases and held land on other tenures (which they are not allowed to do by the Regulations of government) in the names of their relations and servants, who alone can be acknowledged as the ostensible proprietors.

2d. Persons of rank and wealth, who would object to appear before the several courts on various occasions, hold estates in the names of their servants, in order to avoid such inconvenient personal calls.

3d. Purchases are also made at the government sales under fictitious names, on the part of the defaulting proprietors of estates, and hence ensues a variety of roguery and litigation.

4th. There can be no real advantage or convenience in the continuance of the practice, since parties can quite as well send their mootchtar or vakeels to the courts.

5th. A positive prohibition and forfeiture of all right and title to the estate, on proof of such estate being held in a fictitious name, would, I conceive, prevent the continuance of the practice, which appears to be highly objectionable.

I have, &c.

Mirzapore, Magistrate's Office, 9 September 1837. (signed) *W. H. Woodcock*,
Magistrate.

(No. 581.)

From *D. B. Morrieson*, Esq. Magistrate of Benares, to *H. B. Harrington*, Esq. Register of the Sudder Nizamut Adawlut, Allahabad.

Sir,

IN reply to your circular of the 21st ultimo, with its enclosure from the Officiating Secretary to the Indian Law Commissioners, I have the honour to state that the practice of holding landed property under fictitious names is not common in this part of the country.

2. It is, however, not uncommon for such property to be held in the name of other persons than the real owners, though such persons are not fictitious but existent. A son, a brother, a relative of any kind, and frequently a gomashtah, is the apparent or recorded proprietor, while the real one keeps himself behind the screen.

3. This

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3. This is a long old practice, and I imagine that it arose when the country was in an unsettled state, with no permanent government, or one which had neither the confidence nor the good wishes of the community. In such a state of things persons would not be desirous of making any show of wealth or possessions, as it would only expose them to greater hazards, and the custom once having taken root, there will be difficulty in overcoming it. I am of opinion, however, that it is on the decline. At sales in the collector's office here, I have rem arked that mny purchase in their own names, or if they be gomashtahs or agents, they state the name of the party on whose behalf the bargain is made.

4. There are no advantages attending this practice; on the contrary, it enables fraudulent persons to cheat with greater ease, and to set both their creditors and the law at defiance. It is therefore desirable that the practice be put a stop to, but I confess that I do not see how any special enactment can be of any avail. I am of opinion that the practice will of itself decline, and in proportion as the respect and consideration attending on the possession of landed property shall increase, the less inducement will there be for concealing the name of the real proprietor.

I have, &c.

Magistrate's Office, City of Benares, 14 August 1837. (signed) *D. B. Morrieson*, Magistrate.

(No. 362.)

From *W. Hunter*, Esq. Officiating Magistrate of Ghazeepoor, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny and Nizamut Adawlut, N. W. P. Allahabad.

Sir,

In reply to your circular letter, No. 783, dated the 21st July 1837, forwarding copy of a letter from the Officiating Secretary to the Indian Law Commission, I have the honour to return the following replies to the queries therein contained:

1st. I believe the practice of holding lands under fictitious names is common in the district under the jurisdiction of this court.

2d. It is difficult to say when the practice may have originated, but I consider the circumstances which must have chiefly led to induce it to have been the acquisition of large sums of money by improper means, and a desire to lay such money out advantageously in the purchase of landed property without the offenders exposing themselves.

3d. I am not aware of any advantages.

4th. I know of no measures which could be taken to prevent the continuance of this practice, besides that of rendering lands acquired by such means liable to forfeiture; I fear even this, however, would not prove effectual.

2. I beg to remark, that having had charge of this district only for a few days, the above remarks are more dictated by general experience than by a knowledge of how far the practice prevails in this particular district.

I have, &c.

Zillah Ghazeepoor, Magistrate's Court, 14 September 1837. (signed) *W. Hunter*, Officiating Magistrate.

(No. 272.)

From *C. Fraser*, Esq. Commissioner for the Saugor Division, to *H. B. Harrington*, Esq. Register Nizamut Adawlut, Allahabad.

Sir,

I have the honour to acknowledge the receipt of the Court's circular, No. 783, dated the 21st July last, relative to the practice "of persons holding landed property under fictitious names," and to state in reply, that as no such proprietary rights have been recognised in these territories as vested in the subject, the queries of the

Judicial, Criminal.

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Law Commission would not appear to call for any reply from me; but I consider the practice to be an objectionable one, and think that it should continue to be discountenanced.

I have, &c.

Jubulpore, Commissioner's Office,
21 October 1837.

(signed) *C. Fraser*,
Officiating Commissioner.

(No. 83.)

From *M. Smith*, Esq. Officiating Political Assistant Commissioner, Saugor, to *H. B. Harrington*, Esq. Register Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

Judicial.

I HAVE the honour to acknowledge the receipt of your circular, No. 783, with its enclosure, and in reply to the queries of the Law Commissioners therein contained, I beg to state that in this territory the proprietorship of the soil having been pronounced to belong to government, the practice of holding land under fictitious titles does not exist in this district, and as regards the temporary leases of farms, is generally discontinued, as inconvenient and irregular.

I have, &c.

Saugor, Office of the P. A. C.
14 August 1837.

(signed) *M. Smith*,
Officiating P. A. C.

(No. 315.)

From *R. Low*, Esq. Political Assistant Commissioner, Jubulpore, to *H. B. Harrington*, Esq. Register to the Court of Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, of the 21st ultimo, with copy of a letter from the Officiating Secretary to the Indian Law Commission, dated 30th June last.

In reply to the several queries therein contained, I beg to state,

1st. The practice of holding landed property under fictitious names is not common in the district under the jurisdiction of my court, or rather I should say it is almost unknown.

2d. The only instances of the kind I have known, are those in which persons who have been appointed to the situation of tuhseeldars (when they are prohibited from holding villages in malgoozaree) continued to hold villages which they were possessed of before under fictitious names, or rather in that of one of their own children or relations; but I have known no instances of such persons taking new villages under any such fictitious names.

3d. There are no particular advantages in the above practice, neither are there any disadvantages in the few instances that may occur; nor do I conceive any prohibition necessary further than what already virtually exists here, viz. that no native officers shall take villages or lands under any fictitious names.

This question has been answered in a great measure in the above one, but as the state of things to which these questions refer, so common in the Regulation Provinces, does not prevail in this district, I conclude my opinion on the subject is not required.

I have, &c.

Jubulpore, Office of the P. A.
28 August 1837.

(signed) *R. Low*,
Principal Assistant to Commissioner.

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(No. 130.)

From *C. Browne*, Esq. Officiating First Junior Assistant, Seonee, to *H. B. Harrington*, Esq. Register of Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st July, and in reply to the questions proposed, beg to state that the practice of persons holding landed property under fictitious names does not exist in this district; such being the case, any further observations on my part, I presume, are unnecessary. Revenue.

I have, &c.

Seonee, Office of 1st Junior Assistant, 5 September 1837.

(signed) *C. Browne*,
Officiating 1st Junior Assistant.

(No 17.)

From *R. Doolan*, Esq. Officiating First Junior Assistant, Dummow, to *H. B. Harrington*, Esq. Register Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, of the 21st July last, with enclosure from the Officiating Secretary to the Law Commission, of the 30th June, requesting my opinion on several points connected with the practice of holding lands under fictitious names which prevails in this country. Judicial, Miscel.

2. In reply, I beg to inform you, that as in these countries the sole proprietary right in the soil is vested in government, the land is farmed on temporary leases, or granted rent-free in particular instances for charitable purposes and the like, still reverting to government at the death or rejection of the farmer or grantee; and that consequently no sales of land ever take place, so as to allow a subordinate judicial officer or others to obtain and hold an estate under a fictitious name.

3. It sometimes happens that a farmer engaging with government is anxious to substitute for his own name in the lease that of a dependant or distant relation, whilst he himself remains *de facto* the manager and the responsible person for the punctual realization of the revenue; but this practice is always discouraged, and indeed rarely takes place; and if allowed for any particular reason, is always done with the knowledge of, and concurrence of the settling officer.

I have, &c.

Dummow, 1st Junior Assistant Office, Camp Retlee, 4 Sept. 1837.

(signed) *R. Doolan*,
Officiating 1st Junior Assistant.

(No. 106.)

From *M. C. Ommany*, Esq. Junior Assistant Commissioner, Baitool, to *H. B. Harrington*, Esq. Register to Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the Court's circular, No. 783, dated 21st July, accompanying a copy of the Indian Law Commissioners' Secretary's letter, No. 29, dated 30th June, submitting certain questions on which the Court desire my opinion.

Question 1. The practice does not obtain in this district, further than that fathers hold lands in the name of their sons or near relatives.

Question 2. No reply is requisite.

Question 3. I cannot see advantages of such a practice, but as the system is not in operation in this district, I may not have sufficiently attended to the subject.

Question 4. As it is not the practice here to hold property under fictitious names, I need not moot an opinion as to the provisions necessary for its discontinuance. I believe the persons who practise this system are generally officials; but in this district servants to government hold lands in their real and undisguised names. One tuhseeldar was a considerable landholder, and was raised for his

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good reputation to the important post he now fills. His villages have been continued to him, and I am not aware of any mischief that has arisen in consequence of this cause, and that this indulgence has at all affected his character as a public servant. If the system does obtain I am unaware of it, but it can only exist in the case of Government officers.

I have, &c.

Baitool, Office of Junior Assistant Commissioner, 6 Sept. 1837.

(signed) *M. C. Ommany*,
Junior Assistant Commissioner.

(Revenue Department.)

Legis. Cons. 1840, 23d Nov. No. 20.

From *P. B. Smollett*, Esq. Secretary to the Revenue Board, Fort St. George, to the Secretary to the Law Commissioners, Calcutta.

Sir,

Para. 1. The Board of Revenue having placed themselves in communication with the several collectors under this presidency on the questions discussed in Mr. Grant's letter of the 30th June 1837, I am now directed to reply to the several points on which their opinion has been required in the letter under acknowledgment.

2. The practice of holding landed property under fictitious names obtains to a greater or less extent in every district under this presidency. It has prevailed from a remote period, and is not simply confined to the holding of landed tenures, but is equally observed in almost every transaction in which natives engage in daily life. Rents of villages, of custom duties, of abkarry, are most frequently taken in fictitious names, usually that of a dependant, the real party being most commonly the surety of the nominal principal, and this is frequently done with the knowledge and concurrence of the local officers, the circumstances being perfectly understood throughout the district. In the Northern Circars it rarely happens that a large estate is purchased or held under a fictitious name; but in ryotwary districts the puttahs for land held by parties in government employ, of individuals of superior caste and family and of others, are very frequently in the names of relatives or dependants, who do not really enjoy the profits of the land.

3. The motives that have led to this practice are various: servants in public employ resort to it, to avoid the trouble of public registry and application for permission to hold land, as well as the charge of having used undue influence or improper means in obtaining possession of it; moreover, by registering the lands in the name of another, they escape the trouble and discredit of squabbles and disputes, and the necessity of attendance before the subordinate talook authorities for their settlement, as also numerous annoyances connected with the collection, and responsibility for the Circar share of the produce, the furnishing of returns, estimates of crop, and other matters; labours which parties of respectability desire to escape, by inducing a dependant or relative to undertake them by having the lands registered in their names.

4. There are no public advantages in the continuance of the practice; it is the comfort and convenience of individuals that leads in a great measure to its prevalence under this presidency, and doubtless, in some instances, a desire in the parties resorting to it to place their property beyond the reach of creditors or court process. But upon the whole, no practical inconvenience is found to result, as regards the ordinary collection of the revenues, under the system as it exists on this side of India; and the Board are averse to the change of law contemplated, or to the introduction of an enactment for rendering all lands held under fictitious names liable to forfeiture, both because there is no apparent necessity for the law, and because it seems to them that its enforcement would in all likelihood involve the local authorities in constant litigation.

5. It is proper to add, with reference to the observations contained in para. 3 of this letter, that under local regulations in force in this presidency, the purchase of lands by native servants in the provinces in which they serve, whether by public sale

sale or private bargain, is strictly prohibited, except under special authority by the Board of Revenue, submitted through the collector of the district.

I have, &c.

Revenue Board Office, Fort St. George, 25 April 1839. (signed) *P. B. Smollett*, Secretary.

(No. 1143, of 1838.—Territorial Department, Revenue.)

From *T. Williamson*, Esq. Revenue Commissioner of Poonah, to *J. P. Grant*, Esq. Secretary to the Indian Law Commissioners, Calcutta.

Legis. Cons. 1840, 23d Nov. No. 21.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 35, dated the 30th June last, containing queries on the subject of landed property being acquired or held secretly by subordinate judicial officers under feigned names.

2. In reply to the first query, as to whether the practice of holding landed property under fictitious names is common in the provinces under my jurisdiction, I beg to state that instances of land continuing to stand in the names of parties long dead are frequent in some districts; that it is not unusual at all for a man to hold land in the name of his deceased father, and that occasional instances are met with of men taking land in the name of an infant child or younger brother, and sometimes of a servant or other dependant.

3. With regard to the second query, as to when the practice originated, I cannot afford any precise information. It appears to have been the custom under the Mahrattas; but as the information regarding these provinces previous to their supremacy being established is very meagre, I cannot say whether the practice may not have been much more ancient.

4. The circumstances that induced it are various. When the person in whose name the land stands has long been dead, custom is the only reason generally alleged. Some natives appear to have a superstitious feeling about holding the land in their fathers' names, as some soucars always keep their books in the name of their deceased parent. The general reason for entering the land in the name of an inferior is, that where the superintendence of the local government authorities is lax, the real holder may be enabled to enjoy the produce of land, the obligation to pay the revenue of which rests with an apparent pauper, who may be allowed to leave an unpaid balance of revenue, which, if the fraud be not discovered, is frequently ultimately remitted.

5. With respect to the third query, I know of no advantage attending the custom.

6. Referring to your 4th question, I beg to state that I am not aware of any inconvenience resulting from the practice, for the correction of which any fresh legislative enactment is necessary. If the land is rent-free, it is always in government's power to resume it, should it be found that any but those who are legally entitled to it enjoy it; and if not rent-free, as far as government is concerned, no loss of revenue can, under ordinary circumstances, and in a well-managed district, ensue. From the tenor of your letter, however, I am led to believe, that owing to some difference, either in local usages or laws, the system of holding land under feigned names is found to be more objectionable than I have reason to believe it is in this presidency.

I have, &c.

Revenue Commissioner's Camp, Poonah District, Ambeh, 18 May 1838. (signed) *Thos. Williamson*, Revenue Commissioner.

(B.)No. V.
Respecting Lands held under Fictitious Names.

Legis. Cons. 1840, 23d Nov. No. 22. Revenue.

(No. 48.)

From *H. Elliot*, Esq. Secretary Sudder Board of Revenue, Allahabad, to *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commissioners, Fort William.

Sir,

I AM directed by the Sudder Board of Revenue, N. W. Provinces, to acknowledge the receipt of your letter, No. 33, dated the 30th ultimo, requesting their opinion on the practice obtaining in these provinces of persons holding landed property in fictitious names; and, in reply, to communicate the following observations:

Q. 1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your Board?

2. Upon this question the Board observe that it cannot be called a common practice, but there have been instances of it among three classes of persons:

First. Natives of so high a rank, that they would feel themselves degraded by being subjected to the orders and processes of the revenue officers, as the Nuwab of Banda, who has been in the habit of holding lands in the name of a chela or mumlook.

Secondly. Native officers of revenue, who are prohibited from acquiring lands by purchase at public auction, but who do buy, or have bought, such lands, and held them under feigned names. There is an obvious objection to these persons being allowed to buy at auction, as they may be tempted to intrigue to bring a property into arrear with a view to acquiring it.

Thirdly. European British subjects who were prohibited by law from holding lands either on lease, sale, or mortgage, but who did hold them under feigned names in all these modes.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

3. The reply to the second question is contained in the replies to the first.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

4. There do not appear to be any advantages. In the first case, the practice is founded on a prejudice, in the second, on a fraud, and in the third case, the alteration in the law has rendered the practice unnecessary.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

5. The best remedy would seem to be, to direct that all claims brought before any public authority, by or in behalf of the real owner, or on the ground of a title derived from him, to recover lands held under a feigned name, be rejected.

Due notice must of course be given to allow all persons so circumstanced to declare themselves. A year's notice for this purpose should be sufficient, and all suits or claims not brought within that time should be barred. The natives of highest rank require some indulgence in the mode of transacting their business with the revenue officers, which might be allowed.

I have, &c.

Sudder Board of Revenue, Allahabad, 25 July 1837.

(signed) *H. Elliot*, Secretary.

ABSTRACT.

Reply to No. 33, of 30th June, submitting Board's replies to the questions regarding the holding of land in the N. W. Provinces in fictitious names. Board think that practice should be discontinued, and suggest a method.

The foregoing papers require no order.

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ON THE PETITIONS OF THE EAST INDIANS AND ARMENIANS.

To the Right honourable the Earl of *Auckland*, G.C.B. Governor General of India in Council.

We have now the honour to report upon the substantive law to which we think all persons in the Mofussil not subject to Hindoo or Mahomedan civil law should be subject.

On the 15th of November 1836, the government of Bengal sent to the Supreme Government, to be forwarded to the Law Commission, an extract from a despatch of the Honourable Court of Directors, and other papers, connected with certain complaints of the East Indians, and their petition to Parliament. Mr. Secretary Mangles, in his letter of the 17th December 1836, forwarded the same to the Law Commission, to be considered in their proper place.

Of the many subjects to which these papers relate there are three which, as belonging to jurisprudence, and as being very important, appear to be peculiarly deserving of our consideration:

1. The uncertain condition of the petitioners, as regards civil law.
2. Their subjection to Mahomedan criminal law.
3. The subjection to criminal courts constituted according to Mahomedan principles, or at any rate not constituted according to principles acceptable to Christians of British descent.

The second of these questions we consider to be disposed of so far as regards the Law Commission, by the proposed penal code; and upon the third we propose to report separately. The present report will therefore treat only of the first.

Among the papers referred to us is a letter from Mr. Advocate-general Pearson, dated 21st February 1832, addressed to Mr. Deputy Secretary Thomason, in answer to one enclosing the draft of a Regulation intended to provide for the case of the East Indians. The third paragraph of Mr. Pearson's letter is as follows:

"The first difficulty which occurs to me on the subject, and which indeed pervades the whole of it, is the want of some definition of the class of persons to whom the Regulation is meant to apply, the consequent difficulty in determining who are properly East Indians, and in what distance from the pure European blood this character is to be found. By the general law of England all children (even those who are born out of the king's liegeance) whose fathers were natural-born subjects, are subjects themselves, and I apprehend that if an English subject marries a woman of mixed European and Asiatic race, their children would be English subjects to every intent and purpose. If so, the mere shade of colour or complexion would be no criterion as to those who are the objects of the Regulation. I conceive that difficulties of a like nature must have arisen in all countries where the application of a law was limited by the lineage of individuals rather than by the boundaries of the territories they inhabited. But in this country the difficulty would be greater than in any other, on account of the difference in the legal situation of the parties, from the circumstance of the legitimacy or illegitimacy of their birth, and whatever may have been their subsequent intermarriages with each other, the difficulty of discovering whether the first East Indian parents were the offspring of wedlock or not. I would also observe, that it is not said whether under the general denomination of East Indians, that mixed race of persons who are usually styled Portuguese, are meant to be included."

The difficulty thus pointed out by Mr. Advocate-general Pearson is no doubt a considerable one. We are, however, persuaded that it is, with reference to the present purpose, a purely gratuitous one; because we believe that for the remedy

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of the practical grievance of which the petitioners complain, no other definition is necessary than the simple negative one of not being Hindoos or Mahomedans, a definition common to the East Indians with British subjects, Armenians, Portuguese, Frenchmen, and many others.

In considering what ought to be done towards satisfying the claims thus put forward by the East Indians, it appeared to us that our first duty was to consider carefully what now is, or ought to be, according to recognised principles, the legal condition of these petitioners; and as no special legislative provision has been made for them, the answer to this question must necessarily be an answer to the more general and surely very important question, what is the law to which all persons in British India for whom no special provision has been made, or who are not excepted on account of special circumstances, are subject? or, in other words, what is the *lex loci* of British India?

This is a question which we believe has never been fully discussed, perhaps has never been steadily looked at; it forced itself upon our attention in the course of our investigations into the slavery of this country, but we thought the detailed examination of it more appropriate to this place, and therefore have contented ourselves with referring to this report in that which we have prepared upon slavery.

The common opinion, at least among those who think that there is any *lex loci*, seems to be that the Mahomedan law, in all the countries which were subject to the Mogul Emperors, is the *lex loci* of those countries, and that the Hindoo law is the *lex loci* of those territories which were never brought under that subjection.

And this opinion, besides being the common one, has also the advantage of being deducible from a principle supported by very high authority.

We are disposed to think, however, that neither the Hindoo nor Mahomedan law can be considered as the *lex loci* of any part of British India. They seem to us to be in their own nature incapable of performing the function of a *lex loci*. The doctrine that the laws of a country remain in force until they are altered by the conqueror, and bind all persons in the country, must, we apprehend, receive some limitation when that law is in its own nature so utterly inapplicable to strangers, as are the Hindoo and Mahomedan systems.

We bear in mind that the doctrine laid down in Calvin's case, 7th Reports, with regard to the conquest of an infidel kingdom, is treated by Lord Mansfield, in the case of Campbell *v.* Hall, Cowp. 204, as an absurd exception, which in all probability arose from the mad enthusiasm of the Crusades; and that in the same case Lord Mansfield lays it down as too clear to be controverted, "that the law and legislative government of every dominion equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there." "Whoever," he further says, "purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the Plantations, has no privilege distinct from the natives." And if this doctrine of Lord Mansfield is to be taken for law in all its generality, then it will no doubt follow that a European foreigner, an East Indian, an Armenian, every one, in short, who is not saved from such a consequence by some special legislative provision of the British Government, is subject to Hindoo or Mahomedan law accordingly as he is situated in a part of British India in which the Mahomedan law has or has not superseded the Hindoo, or been in its turn superseded by it.

But notwithstanding the great authority of Lord Mansfield, we cannot help thinking that a distinction must be made in such cases as the conquest of a Hindoo or Mahomedan nation. The distinction, however, which we should venture to suggest differs somewhat from that which Lord Mansfield has pronounced absurd.

The distinction pronounced by Lord Mansfield to be absurd is thus stated in Calvin's case: "But if a Christian king should conquer a kingdom of an infidel, and bring them under his subjection, then *ipso facto* the laws of the infidel are abrogated, for that they be not only against Christianity, but against the law of God and nature contained in the Decalogue; and in that case, until certain laws be established amongst them, the king by himself, and such judge as he shall appoint, shall judge them and their causes according to natural equity, in such sort as kings in ancient times did with their kingdoms before any certain municipal laws were given, as before hath been said."

That the Hindoo and Mahomedan laws were abrogated, *ipso facto*, when the king

king of Great Britain * brought these countries under his subjection, we admit to be an absurd doctrine; but it is one thing to say that the Hindoo and Mahomedan laws did not cease upon the conquest to bind Hindoos and Mahomedans, and another thing to say that these laws continued after that event to bind all Christians and others as long as they abide in this country. And with great diffidence and hesitation we are inclined to adopt only so much of Lord Mansfield's doctrine as will support the first of these propositions, rejecting that portion of it from which the last of them is deducible; that is to say, we are inclined to think that the Christian subjects of the British Crown, and of other nations coming into British India, indeed all persons in British India not being Hindoos or Mahomedans, are, independently of all statutes, charters, and treaties, exempt from the operation of the Hindoo and Mahomedan laws.

It is possible to conceive that a nation not Christian should have a system of law which might without flagrant inconvenience be applied to Christians; such was the system of law existing in the Roman empire before the reign of Constantine the Great; but the Hindoo and Mahomedan laws are certainly not such systems; they are so interwoven with religion as to be unfitted for persons professing a different faith. The Hindoo and Mahomedan religions are not part and parcel of the law, but the law is part and parcel of the Hindoo and Mahomedan religions. The character of a *lex loci* seems therefore to be utterly unsuited to the genius of such systems.

With regard to the Hindoos, we believe that they do not themselves consider their laws as the laws of any country, but as the laws of the people who are Hindoos by birth.

Sir Edward Hyde East, in his evidence before the Select Committee of the House of Lords, speaking of the term "Gentoos," in the Charter of the Supreme Court, says, "Whether that was intended to comprehend all other descriptions of Asiatics who happened to be located within the British bounds in India, is perhaps very difficult to be told at this time of day; and there is this singularity in the Hindoo law, that when any Asiatics, such as Sikhs, Parsees, Chinese, and so on, come and settle in India, they bring with them, as it is understood, their own civil laws in many respects, such as of marriage, succession, &c. This is the general spirit and understanding of the Hindoo law; so that all questions of marriage, which in most other countries in the world is a question of local ceremony, and to be governed by the law of the country, and modes of adoption, and various other matters, are regulated by their own particular customs which they bring with them."

Sir Edward East endeavours to account for the state of things he has been describing, thus:

"It is a singular state of things, arising probably from the circumstance that India has been so frequently overrun by different classes of conquerors and settlers."

To us, however, it appears most naturally to arise out of the fact that the Hindoos look upon their law as part of their religion, with which an Armenian or a Chinese living in Hindustan has no more to do than a guest in a Benedictine or Franciscan monastery has to do with the rules of those religious orders †.

There is sufficient evidence that this is the light in which the Hindoos themselves look upon their own law; they are perfectly tolerant of other laws as of other religions; they are even more than tolerant, for they look upon the diversities of laws and religious prevailing among mankind as a beautiful dispensation of Providence, which would be marred by the conversion to Hindooism of those who are not born Hindoos.

The learned Bramins who compiled the code of Hindoo laws, translated by Mr. Halhed,

* The Statute 53 Geo. 3, c. 155, assumes in its preamble the undoubted sovereignty of the Crown.

† It is obvious that, even though the doctrine in the text should be admitted in its fullest extent, it would nevertheless frequently happen that persons living in a country subject to a Hindoo government would be liable, though not belonging to that religion, to have the purely penal or burdensome parts of that law applied to them. A Christian or a Mahomedan living under a Hindoo government might be punished for a crime, or compelled to pay a debt or a tax according to Hindoo law, not because he was entitled to have that law administered to him, but because somebody else was entitled to insist upon its being administered to him.

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Halhed, express themselves in their preliminary discourse to that work, as follows:

"He (the Supreme Being) appointed to each tribe its own faith, and to every sect its own religion; and having introduced a numerous variety of castes, and a multiplicity of different customs, he views in each particular place the mode of worship respectively appointed to it; sometimes he is employed with the attendants upon the mosque in counting the sacred beads; sometimes he is in the temple, at the adoration of idols; the intimate of the Mussulman and the friend of the Hindoo; the companion of the Christian, and the confidant of the Jew. Whereupon men of exalted notions, not being bent upon hatred and opposition, but considering the collected body of creatures as an object of the power of the Almighty, by investigating the contrarieties of sects, and the different customs of religion, have stamped to themselves a lasting reputation upon the page of the world, particularly in the extensive empire of Hindustan, which is a most delightful country, and wherein are collected great numbers of Turks, of Persians, of Tartars, of Scythians, of Europeans, of Armenians, and of Abyssinians. And whereas this kingdom was long the residence of Hindoos, and was governed by many powerful roys and rajahs, the Gentoo religion became catholic and universal here; but when it was afterwards ravaged in several parts by the armies of Mahomedanism, a change of religion took place, and a contrariety of customs arose, and all affairs were transacted according to the principles of faith in the conquering party, upon which perpetual oppositions were engendered, and continual differences in the decrees of justice; so that in every place the immediate magistrate decided all causes according to his own religion; and the laws of Mahomed were the standard of judgment for the Hindoos."

Bengal and Behar.

This shows, we think, that a country conquered from a Hindoo sovereign is not within the principle laid down by Lord Mansfield, in the case of Campbell *v.* Hall. We are not driven to contend that it is an exception which he would have made if his attention had been called to the grounds of it, for neither the words nor the spirit of his main proposition include such a case. His main proposition is, that whoever purchases, lives, or sues in any country, puts himself under the law of the place; and throughout his judgment it is assumed that there is some law of the place; now in a country subject to a Hindoo sovereign there is no law of the place *.

In confirmation, we may observe, that the Christians of St. Thomas are said to have acknowledged a Gentoo sovereign, but to have been governed, even in temporal concerns, by the Bishop of Angamala.—*Vide* Gibbon, vol. 8, p. 347.

The unfitness of the Mahomedan law to be the *lex loci* of a country subject to a government not Mahomedan, depends upon somewhat different considerations. In this case, as well as the case of Hindoo law, the unfitness is the consequence of the indissoluble union of law with religion; but there is this remarkable difference between the cases, the Hindoos, in consideration of this intimate union, hold that even in a country governed by their own princes, their own law, being the word of God addressed specially to the Hindoo race, is not the law of the place, but the law of the Hindoo inhabitants. The Mahomedans draw a quite different inference from the identity of their law and religion; and hold that their law, being the word of God, addressed generally to all mankind, is not only the *lex loci* of countries subject to Mahomedan sovereigns, but ought to be the law of the whole world. In accordance with this principle, they hold that, upon the acquisition of any country by a Mahomedan prince, their law becomes the *lex loci*, not at the discretion of the prince, but as a matter of strict law and religion; and also, that when their law has once been introduced it can never be lawfully superseded by any other system.

In Colonel Galloway's observations on the law and constitution of India, the question is discussed whether or not the Mahomedan law has superseded the Hindoo. He decides that it has; and the grounds of his decision bear directly upon the more general question which we are considering. Colonel Galloway, it will be observed, justifies his statements by Mahomedan authorities; and

* By saying that there is no law of the place, we mean that there is no law which would be enforced upon any strangers where no interests but their own are concerned, and where there is nothing to lead to the inference that they meant of their own accord to adopt the law by which the Hindoo inhabitants are bound.

and as far as our inquiries go, he is quite correct in all that relates to this subject. "We cannot believe," he says, "that a Moslem who had the power, even the legal power, to exterminate the Hindoos as idolaters, would have the will to adopt and to administer their law and constitution, and to subject his Moslem conquerors to it. It is impossible to suppose that a Moslem by exercising would contribute to the permanence of the laws and constitution of an idolatrous and conquered people. The Mahomedan prince who should have attempted this, would, by the sacred law of his Saviour, have subjected himself to the pains of apostacy; and by the ordinary laws of the human mind, to the contempt and execration of those in whom alone he was powerful.

"During the whole period of the Mahomedan history in India, though we have seen that Hindoos were employed even at the head of other departments, we have never heard of a Hindoo judge; and assuredly no Mahomedan kazee could ever have been found to administer the laws of Menu."

After a few more observations, he continues, "This much for the probability of the case. Let us see what the law of the conquerors is.

"By the Mahomedan law, the Daur-ool-hurb, as a foreign province, becomes the Daur-ool-Islam, that is, becomes annexed to the Mahomedan dominions by the mere act of conquest, and the exercise of even a part of the law of Islam in it.

"That country is the Daur-ool-Islam," says the Jaumeea-oor-Ramooz, "in which the laws of the Moslemeen prevail;" and, adds the same writer, "it is stated by Zanhedee that, according to the unanimous opinion of the learned, the Daur-ool-hurb becomes the Daur-ool-Islam by the exercise of even some of the laws of Islaum in it. Profession of the Mahomedan faith on the part of the inhabitants is not a condition. Therefore, by the Mahomedan law, India undoubtedly was the Daur-ool-Islam, nay, is held by law to be so now; for it is not a necessary condition that the sovereign be a Moslem. If then by law the empire of India, by virtue of the Mahomedan conquest, became the Daur-ool-Islaum, that is, a part of the Mahomedan dominions, it would have been absolutely contrary to law, even an heresy in its most formidable shape, to have suffered any law or constitution to exist in India but that of Islaum. Every law, even private right and interest, which existed in the country prior to the conquest, by that act alone perished."

After some further details, Colonel Galloway thus sums up: "This is the Mahomedan law of conquest; and it is mandatory, and not optional, to establish the law of Islaum within the Mahomedan dominions."

The same doctrine is clearly implied in the 2d chapter of the 9th book of the Hedaya, entitled, "Of the Manner of Waging War."

The chapter begins thus: "When the Mussulmans enter the enemy's country, and besiege the cities or strongholds of infidels, it is necessary to invite them to embrace the faith, because Ibn Abbas relates of the Prophet that, 'He never destroyed any without previously inviting them to embrace the faith.' If, therefore, they embrace the faith, it is unnecessary to war with them, because that which was the design of the war is then obtained without war. The Prophet, moreover, has said, 'We are directed to make war upon men until such time as they shall confess there is no God but one God; but when they repeat this creed, their persons and properties are in protection.' If they do not accept the call to the faith, they must then be called upon to pay jizyat, or capitation tax; because the Prophet directed the commanders of his armies so to do; and also because by submitting to this tax war is forbidden and terminated, upon the authority of the Koran. If those who are called upon to pay capitation tax consent to do so, they then become entitled to the same protection, and subject to the same rules as Mussulmans, because Alee has declared, 'Infidels agree to a capitation tax only in order to render their blood the same as Mussulman blood, and their property the same as Mussulman property.'"

The Mahomedan law, then, repudiates the doctrine laid down in the case of Campbell *v.* Hall, respecting the effect of conquest upon the existing law of the conquered country, in both its branches. In the case of a conquest made from a Mahomedan prince it does not admit the right of the conqueror to change the law. In the case of a conquest made by a Mahomedan prince, it does not admit that the law established in the country continues to bind all persons within it till altered by the new sovereign, but insists that the conquest abolishes that law, *ipso jure*. This last proposition, it may be observed, contains the very same doctrine as that laid down

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by Lord Coke respecting a conquest by an English prince, and which Lord Mansfield justly stigmatised as absurd. But though the doctrine is the same, the root by which it inheres in the system it belongs to, is widely and essentially different. The English law, as it does not profess to be a revelation from God, may be changed by Parliament in the way of legislation, and by the courts of law over-ruling antiquated doctrines, as we see it has been changed by Lord Mansfield in this very article. But the Mahomedan law not being, so far as regards its fundamental principles, the creation of a legislature, nor of judicial decisions, but assuming to be the revealed commands of God, is, upon its own fundamental principles, absolutely immutable A Mahomedan Lord Coke would be a saint: a Mahomedan Lord Mansfield a heretic or an apostate. Another diversity of consequences flowing from this difference is that, whereas an English conquest of a Mahomedan country leaves the void caused by the abolition of Mahomedan law to be supplied by mere natural equity, a Mahomedan conquest of any non-Mahomedan country not only subverts the established law, but, *uno flatu*, sets up the Mahommedan law in its stead.

The doctrine laid down in the case of Campbell *v.* Hall is admirable as a part of the public law of nations, who can act upon it reciprocally. If the French conquer an English settlement, the English law continues to be the *lex loci* until it is altered by the French government; and therefore it is not unfitting that if the English conquer a French settlement, the French law should continue in like manner until the English government should think fit to change it. But if a Mussulman prince should conquer an English or French settlement, the English or French law is *ipso jure* utterly abolished. The prince himself cannot save it from abolition. If he were to attempt it, he would be guilty of heresy, and his judges would be bound to disobey his commands.

All these considerations impress us with the belief that if Lord Mansfield had been called upon to decide a case arising in a country conquered from or ceded by a Mahomedan power, and had been pressed by these or similar arguments, he would have been disposed, in over-ruling Lord Coke's doctrine, to have limited the continuance of the Mahomedan law to the Mahomedan population, who alone would suffer from the fanatical injustice which he was seeking to remedy. His doctrine in the case of Campbell *v.* Hall was, so far as regards Mahomedan countries, extra-judicial, not being called for by the circumstances of the case. And it is no disparagement of this great magistrate to say that this, like many extra-judicial dicta, is found to be susceptible of amendment, when instead of being considered only as part of a more general proposition, it becomes the direct and principal object of attention, and suggests to the understanding the specialities which may distinguish it from the other cases of that more general proposition.

But even if we waive this objection, and admit, for the sake of argument, that the Mahomedan law is not to be excluded from the privileges conferred by the rules of international jurisprudence, because it denies the authority of those rules, and refuses to be bound by them, other unanswerable reasons remain why it cannot be recognised by any but Mahomedan jurists as the *lex loci* of a country in which the ruling power is not Mahomedan.

The reasons we speak of are drawn from the manner in which persons not of the faith are treated by that law.

The Mahomedan law divides the people into Mussulmans, Zimmees, and Mustamins.

Zimmees are infidel subjects, that is, infidels who have submitted to the capitation tax.

Mustamins are infidel aliens. Their condition is thus described in the Hedaya, vol. 2, p. 196:—

"If an alien come, under protection, into a Mussulman territory, the Imam must not suffer him freely to reside there for the complete term of a year, but must give him notice that 'if he should remain the full year, he will impose jizyat (capitation tax) upon him.' The reason of this is, that an alien is not to be allowed to continue in a Mussulman territory for any considerable space of time, except in slavery, or in consideration of paying the capitation tax; if he continue in the Mussulman territory for a whole year, he becomes a Zimmee or subject; because when he remains a year in the Mussulman territory, after the Imam's notice to him, it is known that he undertakes to pay capitation tax, and he becomes a subject of course."

If, then, the Mahomedan law is still the *lex loci* of British India, all the Europeans

Europeans in the Mofussil, including the British themselves, must be considered as Zimmees, for in no other capacity could Mahomedan law be administered to them. That it is impossible for any government, not itself Mahomedan, to consider them as Zimmees, is, we suppose, sufficiently evident from what has been already stated; but the absurdity of such a proposition will become still more manifest if we look at the legal disabilities of a Zimmee.

No Zimmee can be a judge in a Mahomedan tribunal.

Colonel Galloway, in the sequel to the passage we have already quoted from him, says, "Even questions of inheritance among non-Moslem subjects, as I have before stated, are not left to the decision of any other than a Moslem tribunal, but must be decided according to the Mahomedan law, and by Moslem judges; for every judge must be a Moslem, as is stated by all writers on the law."

"The authority of a kazee is not valid," says the Hedaya, "unless he possess the qualifications necessary to a witness; that is, unless he be free, sane, adult, a Mussulman, and unconvicted of slander."

Professor Horace Wilson infers, from Mr. Orme's making an assertion inconsistent with this doctrine, that he "must have been exceedingly ignorant of the character, and apparently of the languages, of the people."

This inference is to be found in a note to Professor Wilson's edition of Mr. Mill's History of India, vol. 2, page 164. "Mr. Mill," he says, "may be excused for making such a mistake as to assert that under the Mahomedan government the offices of 'magistrates' were filled by Hindoos. He follows the authority of Orme; but Orme, though an excellent guide in all that relates to the European transactions which he beheld, must have been exceedingly ignorant of the character, and apparently of the languages of the people. His remark that the administration of justice devolved upon the Hindoos is most certainly erroneous, as no unbeliever could, consistently with the principles of the Mahomedan faith, have been entrusted with such duty; and the illustration he gives, that the office of duan was generally conferred upon Hindoos, is an amusing proof how little he understood what he was saying; the office of duan, or dewan, being of a financial nature, and wholly unconnected with the administration of justice."*

So also no Zimmee can be an arbitrator:

"It is not lawful to appoint a slave, or an infidel, or a person that has been punished for slander, or an infant, to act as an arbitrator, because none of these is competent to be a witness."—Hedaya, vol. 2, p. 638.

These doctrines of the Mahomedan law, relative to the disqualification of any but a Mussulman to be appointed a judge or arbitrator, were found in full force in this country when the British government began to make inquiries into the subject. This will be seen from what is stated in the Sixth Report from the Committee of Secrecy, appointed to inquire into the state of the East India Company, page 9:

"April 1772. Letter from Council of Revenue at Moorshedabad to the President and Council.—This letter encloses a memorial from the naib duan, on the subject of arbitration, accurately distinguishing such causes as are proper for that mode of decision, and such as must be decided by the courts of judicature according to the law; of the latter kind, he states, are all disputes of inheritance, property, purchases, assignment, and the like. That these cases, depending upon the laws of the Scriptures, according to the orders of the Almighty and his Prophet, cannot be proper subjects of arbitration, for the right must be decided according to the precepts of the law, and common arbitrators cannot be proper judges thereof. That cases of misdemeanor or offence, by one subject to another, cannot be referred to arbitration, but must be judged and punished by the proper officers of justice, and much more especially crimes of a higher magnitude must undergo the judgment of the law itself; that, on the other hand, in cases of debt, account, or other commercial concern, arbitration is the best mode of decision; that he had accordingly issued orders to the officers of the courts of justice in the several

* It is true, however, that in the decay of the Mahomedan power the dewan did exercise judicial authority; and Mr. Orme probably took his notions of the Mahomedan system of government from what he saw actually existing, without inquiring how far it might consist with strict Mahomedan principle.—*See* 5th Report, 1812, pp. 6. 190; Colebrooke's Supplement, p. 8; Grant's State of Society in India, in the General Appendix to Report of Select Committee of the House of Commons, 1832, p. 16.

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several districts, that in all matters of debt, trade, petty quarrels, and ordinary occurrences, where the parties are willing to refer, they should appoint arbitrators, and that registers be duly kept in the Courts of Adawlut of all causes decided in that way.

"The letter of the Council of Revenue represents the necessity of restricting the orders relative to arbitration to such cases specified for that purpose in the naib duan's memorial; for that it would be productive of the greatest dissatisfaction in the country, if that mode of decision was to be substituted in the place of judicial determinations, in such cases as fall under the first principles of the Mahometan law; that such a measure would be regarded by all the Mahometans as an infringement on their religion and customs, would excite great discontent and apprehension, and perhaps be liable to an obstinate and inflexible opposition."

The government of Bengal, in approving of this suggestion, fell into the very natural error of supposing that when the parties to a suit were Hindus, a Hindu might be called in to assist the magistrate with his knowledge; this, it will be seen, called forth a strong remonstrance from the naib duan:

"In the answer from the President and Council to the Council of Revenue, they entirely assent to the distinction proposed in the above letter, declaring that all cases of inheritance, marriage, or other matters, for which the Mahometan law has made provision, and likewise matters respecting inheritance, and the particular laws and usages of the castes of the Gentoos, should be decided by the established magistrates, assisted by the proper persons of the respective religions, according to the laws and usages of each."

"The Council of Revenue, in a letter to the President and Council, May 1772, enclosed a remonstrance of the naib duan, respecting that part of the instructions in the last letter of the President and Council, which directed, that in cases of the inheritance of the Gentoos, the magistrates should be assisted by the Brahmins of the caste to which the parties belong. In that memorial the naib duan strongly remonstrates against allowing a Brahmin to be called in to the decision of any matter of inheritance or other dispute of Gentoos. That since the establishment of the Mahometan dominion in Hindostan, the Brahmins had never been admitted to any such jurisdiction; that to order a magistrate of the faith to decide in conjunction with a Brahmin, would be repugnant to the rules of the faith, and an innovation peculiarly improper in a country under the dominion of a Mussulman Emperor. That where the matter in dispute can be decided by a reference to Brahmins, no interruption had ever been given to that mode of decision; but that where they think fit to resort to the established judicatures of the country, they must submit to a decision according to the rules and principles of that law by which alone these courts are authorized to judge. That there would be the greatest absurdity in such an association of judicature, because the Brahmin would determine according to the precepts and usages of his caste, and the magistrates must decide according to those of the Mahometan law. That in many instances the rules of the Gentoo and Mussulman law, even with respect to inheritance and succession, differ materially from each other."

Lastly, a Zimmee cannot be a witness respecting a Mussulman. This has already appeared by our quotations from the Hedaya, in the form of a reason why a Zimmee cannot be a judge or an arbitrator. In that part of the book which treats of evidence, it is assumed as unquestionable law.

Now, it seems to us as clear as any proposition of the sort can be, that a system of law which, according to its own principles, can only be administered by Mahomedan judges and Mahomedan arbitrators, upon the testimony of Mahomedan witnesses, is not a system which can devolve *ipso jure*, and without express acceptance, upon a government and people of a different faith.

The author of the work from which we have been quoting, is a disciple of the school of Haneefa. This is the most liberal of the Mahomedan schools of jurisprudence; it will be found that they really are very liberal to Zimmees, when the rights of that class only are concerned, and not the rights of Mussulmans.

According to the author of the Hedaya, "The testimony of Zimmees, with respect to each other, is admissible, notwithstanding they be of different religions." Of course it is admissible, *à fortiori*, when they are of the same religion.

He gives the arguments of Malik and Shafei against this last proposition, and the arguments of those with whom he agrees, and whom he calls "our doctors," on the other side, and then shows the invalidity of an objection which might be made

made to the first and more general proposition, but which does not apply to the last and less general one.

Since, then, a Zimmee might be a witness where the rights of unbelievers only are concerned, it seems to follow that, in such cases, a Zimmee might also be an arbitrator, and even a judge. For, as we have seen, the only reason assigned in the Hedaya why a Zimmee cannot be appointed an arbitrator is, that he is not competent to be a witness. In like manner, we have seen that the authority of a kazee is, in the same book, said not to be valid unless he possess the qualifications necessary to be a witness, one of which is, that of being a Mussulman; and immediately after, the reason is assigned in terms which evince in the strongest manner the dependence of the one disqualification upon the other. The whole passage runs thus:—

"The authority of a kazee is not valid unless he possess the qualifications necessary to be a witness; that is, unless he be free, sane, adult, a Mussulman, and unconvicted of slander; because the rules with respect to jurisdiction are taken from those with respect to evidence, since both are analogous to authority; for authority signifies the passing or giving effect to a sentence affecting another, either with or without his consent; and evidence and jurisdiction are both of this nature (the rules with respect to jurisdiction are here said to be taken from those with respect to evidence, because, as the sentence of the kazee is in conformity with the testimony of the witness, it follows that the evidence is, as it were, the principal, and the decree of the kazee the consequent). As, therefore, jurisdiction, like evidence, is analogous to authority, it follows that whoever possesses competency to be a witness, is also competent to be a kazee; and also, that the qualifications requisite to be a witness are in the same manner requisite to be a kazee."

These principles are further illustrated by what is said in the second book, which treats of marriage. Speaking of authority to contract others in marriage, the author observes: "An infidel cannot be vested with this authority with respect to a Mussulman, male or female, because the word of God says, 'He doth not admit infidels to any claim upon believers;' and if this authority were vested in infidels, it would be admitting them to such a claim; and hence, also, it is, that the evidence of infidels, regarding Mussulmans, is not admitted; and upon the same principle, that Mussulmans and infidels cannot inherit of each other.

"An infidel is vested with this authority with respect to his children who are infidels, the word of God saying, 'infidels may exercise authority over infidels;' whence it is that the evidence of infidels regarding infidels is admitted, and that inheritance obtains among them."

These liberal doctrines, coupled with other liberal doctrines which we are about to notice, and which relate to the substantive law, lead, it will be seen, to a result very different from what the intolerant maxims of Islamism would seem to promise. With regard to the substantive law to be administered to Zimmees in Mahomedan courts, the Mussulman jurists appear, in general, to hold that it must be Mahomedan law. But they hold, also, that the law itself admits of more or less modification in its application to Zimmees. Haneefa, indeed, seems to have held, that the injunctions of the law are not addressed to infidels. He seems to have gone the whole length of asserting that the Mahomedan law is a law for Mahomedans, and not a *lex loci*, and that it ought not to be administered to Zimmees, even in a Mahomedan court. This opinion, which does not appear to be adopted by other Mussulman jurists, is attributed to Haneefa in the Hedaya, in discussing the question whether a marriage between infidels, which would have been invalid if the parties had been Mussulmans, but to which there is no objection by the rules of their own sect, is to be considered invalid upon their conversion to Islamism. The opinion of Ziffer, Haneefa's contemporary and companion, upon the same question, is worthy of remark, for it seems to contain the principle upon which, coupled with the doctrine that where Zimmees only are concerned a Zimmee may be a witness, an arbitrator, or a judge, the practice of Mussulman governments has been usually modelled:

"Ziffer maintains the marriage to be invalid, but that infidels are not liable to be called to an account until they embrace Islamism, or until they appeal to the law; that is, carry the matter before the judge."

Again, "The argument of Ziffer is, that the word of the sacred writings extends to all men alike, and consequently to infidels; but the parties, as being Zimmees, are not liable to molestation; but this exemption from molestation is an effect of indulgence,

indulgence, and does not proceed from any idea of the marriage being legal; and of course when it becomes a subject of litigation, or the parties become Mussulmans, separation must ensue, the illegality of the marriage still remaining."—Vol. 1, pp. 174, 175.

Here we see that, although the word of the law extends to all men alike, and consequently to infidels, still they are at liberty to follow their own customs among themselves, so long as they do not appeal to the law, so long as they do not carry the matter before the judge, that is to say, the Mahomedan judge. But it has been already shown, that where Zimmees only are concerned, a Zimmee may be a judge, whence it follows that a Mussulman prince may, without deviating from orthodoxy, permit any class of his infidel subjects to follow their own laws among themselves, and to have them enforced in courts of justice in which judges of their own faith preside. Thus the Mahomedans arrive, though by a different road, at a practical result which differs little from the system of the Hindoos. They hold, indeed, (Haneefa, however, seems an exception,) that there is a *lex loci* in their country, but they consider it as practically suspended with regard to unbelievers, until they shall be converted to the faith, or shall appeal to a Mahomedan court.

The examples of this are numerous. We learn from Prescott's History of Ferdinand and Isabella, that under the Mussulman rule in Spain, "the Christians in all matters exclusively relating to themselves, were governed by their own laws, administered by their own judges, subject only in capital cases to an appeal to the Moorish tribunals*."—Vol. 1, p. 6.

It is said that the Greeks, under the dominion of the Turks, always looked upon the compilations of the Emperor Basil as the rule of their conduct; and it is probable that in doing so they had the sanction of the Turkish government. For, as we are informed, it appears from Thiersch, (Etat Actuel de la Grèce,) that the Greek Islands were, under the Turks, so many republics, governing themselves entirely by their own laws, and through their own magistrates and judges.

But the most familiar instances are the numerous factories in the Levant and the East, belonging to the various Christian nations of Europe, which we shall have to notice more particularly in another part of this discussion.

Whether, then, we consider the Mahomedan law as itself repudiating the international doctrine of Christian Europe; or the ignominous position which it assigns to persons of a different faith, where the legal rights of Mussulmans are concerned; or lastly, the practice sanctioned by its most liberal expounders, of leaving each class of subjects who are not Mussulmans, to administer their own laws among themselves by judges of their own, we must conclude that the doctrine of the unfitness of Mahomedan law to be the *lex loci* of a country which has passed under the government of a Christian prince, rests upon a more solid foundation than the "mad enthusiasm of the Crusades."

If it should be said that although the Hindoo law, taken as a whole, and the Mahomedan law, taken as a whole, are unfit for the purposes of a *lex loci*, yet some parts of them, as of every other law, are in accordance with universal principles of jurisprudence, and that these parts only, separated from the rest, are to be considered binding upon all persons in British India who are neither Hindoos nor Mahomedans, nor persons who have by express enactment been subjected to English law, the answer is this: The Hindoo and Mahomedan systems profess to consist of an inspired text, and authentic expositions of that text. Each of them is consequently, according to its own fundamental principles, immutable and indivisible. A foreign legislature which disregards their fundamental principles, may, if it pleases, separate part of their provisions from the remainder, and enact that part, as we have actually done with respect to the Mahomedan criminal law; but we do not administer these rules as the commands of God delivered by his Prophet, but as provisions which we think adapted to the circumstances of the country. The separation which we have thus made, and the mode in which we deal with the part separated, are quite inconsistent with Mahomedan principles; for the Mahomedan and Hindoo laws do not recognize the right of any human legislature to take them to pieces; still less will they resolve themselves into separate parts by the silent operation of general principles of jurisprudence, which last is the thing assumed in the supposed objection to which we are replying.

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* Mr. Prescott's authority for this is the Fuero Juzgo: Intro. p. 40. edit. 1815.

It is perhaps hardly necessary to remark that the force of the above reasoning does not depend upon any supposed deficiency of the two systems in question, considered merely as systems of substantive law, nor upon our disbelief of their pretensions to inspiration. Had they been the perfection of wisdom, that would have been a good reason why our legislature should have made laws in imitation of them; but no reason for classing them with systems of law which, upon international principles, are binding, notwithstanding a change of sovereignty, upon all persons coming into the countries where they obtain, until the new sovereign think fit expressly to abolish them. As little would a belief in their pretensions to inspiration prevent us from excluding them from that class. Thus, for example, in the case of the Greek or Roman conquest of the Jews, assuming that the modern principles of international law had been established in those times, the unity of Jewish law and religion would, if our arguments are sound, have prevented that law from extending itself over the Gentile subjects of Antiochus or Vespasian, that is, from being the *lex loci* of Greek or Roman Judea, as effectually as it prevents the Hindoo and Mahomedan systems from being the *lex loci* of British India.

If then neither the Hindoo nor Mahomedan law is *lex loci* of any part of British India, it remains to be considered whether English law is the *lex loci*. If it is not, then we are driven to conclude that there is none at all.

A country governed by one of the civilized nations of modern Europe, and yet having no *lex loci*, would be a phenomenon without example in jurisprudence. To find an European example, we must revert to the state of things produced by the barbarian conquest of the Roman empire. Von Savigny, speaking of the sources of law in the new nations, produced by that conquest, expresses himself to the following effect: "Mixed together in the same territory, the two nations preserved distinct manners and laws, which engendered that sort of civil law called personal law, in opposition to territorial law. In truth, it is a principle of modern times that the law is determined by the territory, and that it governs the properties and contracts of all those who inhabit therein; under this arrangement citizens differ little from strangers, and national origin has no influence. But in the middle ages it was otherwise; in the same country, in the same town, the Lombard lived according to Lombard law, the Roman according to Roman law. The spirit of personal laws reigned equally among the individuals of the different Germanic tribes, and the Franks, the Burgundians, and the Goths lived on the same soil, each according to their own law. Thus is explained the following passage in a letter from Agobardus to Louis the Debonnaire, 'One frequently sees conversing together five people, of whom no two obey the same laws.'"

We translate from the French translation, by Mr. Chs. Guenoux, entitled, "Histoire du Droit Romain au Moyen Age."–V. 1, p. 84.

This however is unquestionably the condition of British India, if it be true that neither the Hindoo nor Mahomedan law can be *lex loci*, and if it be also true that English law owes its introduction into India to the charters of the supreme courts or the mayor's courts.

If there had been no authority in favour of this last proposition, we should have had little hesitation in denying it, and in asserting that when any part of British India became a possession of the British Crown, there being in it no *lex loci*, but only two systems of rules for the government of two religious communities, the English law became *ipso jure* the *lex loci*, and binding upon all persons who do not belong to either of those communities. There is certainly no express authority for this doctrine; but if it be admitted that neither the Hindoo nor Mahomedan law can be considered as *lex loci*, then British India must, we think, be considered with regard to all persons not Hindoos or Mahomedans, as an uninhabited country colonized by British subjects. And then, according to the doctrine said to have been laid down by the Lords of the Privy Council, 2 Peere Williams, 75, with the reasonable limitations assigned to it by Sir W. Blackstone, I. 107, those British subjects must be held to have carried with them to this country so much of English law as is applicable to their situation. And so much of the English law must be held to be, and to have been, ever since the country became subject to the British Crown, the *lex loci* of British India.

This seems to us a fair application of principles of international law, to a combination of circumstances to which they have not before been applied. And accordingly, if there had been no authority opposed to it, we should have felt some confidence in this view of the case; but we are afraid that there is very grave authority which is not reconcilable with this view. As far as we know, all the judges of the Supreme Court of Calcutta, who have declared any opinion upon the subject,

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subject, have used expressions which imply that the legal condition of India, upon its becoming British, was one for which the general principles of international jurisprudence afford no remedy. That even admitting the Hindoo and Mahomedan laws to be by their own nature restricted to the persons professing the religious faith with which they are respectively interwoven, still the legal vacuum which must have been occasioned by this restriction, could not be filled up by the spontaneous influx of English law, but required the express intervention of legislative power.

Those high authorities all appear to consider that the English law, so far as it has been introduced into this country, has been introduced by the charters of the supreme courts and mayor's courts, and would not now be in force in any part of India were it not for those charters.

In the evidence of Sir Edward Hyde East, before the Select Committee of the House of Lords in 1830, in the appendix to that evidence, and in the various learned and elaborate papers by the judges of the Supreme Court, contained in the Fifth Appendix to the Third Report of the Select Committee of the House of Commons, 1831, this doctrine is to be found frequently implied, but being treated as a matter not in controversy, there is no explicit and succinct statement of it adapted to quotation.

We do not know when this doctrine was first broached. We should conjecture that it was not till after the establishment of the Supreme Court in 1774, because it has rather the air of having been devised as a means of reconciling the language of the charters implying, as that language does, that the courts were to administer English law, with the doctrine laid down by Lord Mansfield in the case of Campbell *v.* Hall (decided in the very same year), according to which all Englishmen in India would, if there had been no legislative interference, have been subject to Hindoo or Mahomedan law.

This language of the charters and this doctrine of Lord Mansfield could only be reconciled by the supposition, that the charters were to be considered as legislative Acts introducing the English law, instead of what they apparently purport to be, that is to say, instruments erecting courts for the administration of law previously established, or simultaneously flowing in from some other source.

As a consequence of the doctrine that the charters introduced English law, it has been further held that the same charters abolished the Hindoo and Mahomedan laws, and this appears to be a logical consequence. It looks, however, very much like a *reductio ad absurdum* of the premises from which it is deduced. It is at least a startling proposition, that the laws of the ancient inhabitants of a country can be abolished by an instrument which says nothing about them.

Neither is it very easily reconcilable with the provision in the second charter of the mayor's court, granted in the 26th Geo. 2, that suits between Indian natives only should not be tried by that court unless by the consent of both parties; unless, indeed, that provision is to be considered as tacitly re-establishing the laws which had been tacitly abolished. Any mischievous effects of this doctrine have been obviated, as regards the Supreme Court of Calcutta, by statute 21 Geo. 3, c. 70, sect. 17, which provides, "that their inheritance, and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans; and in the case of Gentoos, by the laws and usages of Gentoos; and where only one of the parties shall be a Mahomedan or Gentoo, by the laws and usages of the defendant." But in the settlement of Malacca, where there is no analogous statutory provision, the unreasonableness of this doctrine has been most strongly manifested.

The late Sir Benjamin Malkin, when recorder in the Straits, felt himself reluctantly bound to decide that the charter of the court of judicature there, had tacitly abolished the Dutch law, and substituted English law for it.

We cannot think that a principle which bears such fruit as this, is a sound one. Here is the refined legal system of a civilized people, altogether exempt from the crusading prejudice against Mahomedan law, the unquestionable *lex loci* of the settlement of Malacca, swept away by an instrument which does not mention it.

The case in which Sir B. Malkin felt himself compelled to decide thus, was that of Rodyk and Others *v.* Williamson and Others. He thus speaks of it in another case decided by him on 31st March 1835: "I expressed my opinion that I was bound by the uniform course of authority to hold that the introduction of the King's charter into these settlements had introduced the existing law

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of England also, except in some cases where it was modified by express provision, and had abrogated any law previously existing. I intimated much doubt, indeed, whether I should have agreed in such a construction of the effect of a charter, if the question had been a new one; but I felt bound by the weight of authority, and decided against the continuance of the Dutch law at Malacca accordingly."

By the kindness of Sir Edward Ryan we have had access to a note of the case itself, in the handwriting of Sir B. Malkin.

From this note he appears to have said that, if the question were new, he should be inclined to hold the law of a settlement unaltered, except by express declaration, and that a charter would only introduce a new court to administer old law, except when expressly changed, and that the charter did not change law, except criminal, and perhaps ecclesiastical.

After referring to Sir Edward Hyde East's opinion, and to the statute 21 Geo. 3, he appears to have said that he did not dare to act against these authorities, but that it was a very fit question to be decided by the highest tribunal. *A fortiori* is it, we think, a very fit question to be settled by legislative declaration or enactment.

It will be seen from this case of Rodyk *v.* Williamson, that Sir Benjamin Malkin's own opinion was opposed to the doctrine that English law can be tacitly introduced by the King's charter. But as far as we know, he is the only one of the Indian judges who has questioned the correctness of that doctrine.

It appears from the report of Master Stephen, in the case of Freeman *v.* Fairlie, that all the learned judges who had sat on the bench of the Supreme Court in Calcutta, and who gave evidence in that case, referred the introduction of the English law to the charter of 1774, and the former charters. The doctrine maintained by Master Stephen himself coincides with our own opinion, and as he has stated it with great force, we shall make some extracts from his report.

After adverting to the view taken by the Indian judges, and stating that he had examined the charters from that of 24th September 1726, inclusively; he says, "I find in none of them any express introduction of English law; but, on the contrary, they seem all to have proceeded on the assumption that English law was already in force in those settlements, and their provisions are directed chiefly to the establishing competent judicial authorities and rules of proceeding by which the existing law may be better administered."

After examining the charter of 1726, he continues thus: "The same observations apply to the charter of the 8th January 1753, whereby the mayor's courts were established, and their jurisdiction further regulated, and to the charter of 26th March 1774, constituting the supreme court of judicature, upon which the questions in reference are held by the court to turn. Though some of the opinions in evidence before me speak of this latter charter only as having introduced the law of England, no provision to that effect is to be found in it; but it plainly proceeded, like the former charters constituting the mayor's courts, upon the supposition that English law was already generally in force." "I must conclude, therefore, that English law was not, as the learned judges have supposed, brought in by the charters." "India is not, in the sense of the authorities by which the rule has been laid down, a new discovered country, and with respect to colonies or settlements acquired by cession or conquest, within which description our Indian territories are, the rule is different, the laws of the place, in such cases, remaining in force till changed by Royal or Parliamentary authority. But there is an anomaly in the case of the settlements in question which made it difficult or impossible, as I conceive, practically to apply there the latter rule to its full extent, and took the case out of the principles on which both the rules were founded."

In the report of the case, "the" is printed apparently instead of "which."

"The reason why the rules are laid down in the books of authority with reference to the distinction between new-discovered countries, on the one hand, and ceded or conquered countries on the other, may be found, I conceive, in the fact that this distinction had always, or almost always, practically corresponded with that between the absence and the existence of a *lex loci* by which the British settlers might, without inconvenience, for a time be governed; for the powers from whom we had wrested colonies by conquest, or had obtained them by treaties of cession, had ordinarily, if not always, been civilized and Christian states, whose institutions therefore were not wholly dissimilar from our own. But in the settlements formed by the East India Company in Bengal the case was very different,

"Inhabited," in the Report.

and one to which neither of the rules referred to could possibly have an entire application. The acquired territory was not newly-discovered or uninhabited, but well-peopled, and by a civilized race, governed by long-established laws, to which they were much attached, and which it would have been highly inconvenient and dangerous immediately to change. On the other hand, those laws were so interwoven with and dependent on their religious institutions, as Mahomedans or Pagans, that a great part of them could not possibly be applied to the government of a Christian people."

"Some new course was to be taken in this peculiar case, and the course actually taken seems to have been to treat the case, in a great measure, like that of a new-discovered country; for the government of the Company's servants, and other British or Christian settlers using the laws of the mother country as far as they were capable of being applied for that purpose, and leaving the Mahomedan and Gentoo inhabitants to their own laws and customs."

The report of Master Stephen was confirmed by Lord Chancellor Lyndhurst; but as the decision of this question respecting the mode in which English law has been introduced into India, was not necessary to the decision of the questions before the court, the case does not furnish any judicial authority on the point one way or the other. The only report of the case which we have seen is in E. F. Moore's Reports of Cases determined by the Judicial Committee of the Privy Council, p. 305; and from what the reporter says, p. 299, it appears that Lord Lyndhurst's judgment is taken from the shorthand writer's note. We, however, abstain from drawing any inferences from the expressions attributed to that learned Lord, not feeling quite satisfied that they are precisely the expressions used by him.

The latest case in which the introduction of English law into India has been considered, is the Mayor of Lyons *v.* The East India Company, which was an appeal to the Privy Council from a decree of the Supreme Court at Calcutta, made in four causes which had been consolidated, touching the construction of the will of Major-general Claude Martin.

That case decides only that a certain portion of English law, viz. the law disabling aliens from holding real estate, has not been introduced into India at all. This decision seems to be rather in favour of our view of the question, because, if the English law was introduced by the charters, it should seem that all parts of it have been introduced that have not been expressly excepted. Whereas if it came in upon general principles, only so much of it would come in as is adapted to the circumstances of the country. However, as neither the attention of the Supreme Court here, nor that of the Privy Council, was called to the question we are considering, we do not rely upon this case as an authority in favour of our views.

With the exception of the above-mentioned case of Rodyk *v.* Williamson, in which the question was decided merely upon authority, and of Freeman *v.* Fairlie, in which the question was raised in the Master's Report, and not decided at all, we are not aware of any case in which the precise question we are now considering has received any discussion. But there is a case in which Lord Stowell (the highest English authority upon international law) uses expressions which lead to the belief that he would have sanctioned the doctrine that the English law must have come into our factories in India as soon as they became our factories, and into our dominions in India as soon as they became our dominions.

In the case of the Indian Chief, 3 Robinson's Reports, 29, when he is assuming, for the sake of argument, that Calcutta was at the time a mere factory in the dominions of the Mogul, he holds that a subject of the United States of America carrying on trade at Calcutta, takes his temporary national character, not from the Mogul dominion, but from the British factory:

"It is a rule," he says, "of the law of nations applying peculiarly to these countries, and is different from what prevails ordinarily in Europe and the western parts of the world, in which men take their present national character from the general character of the country in which they are resident, and this distinction arises from the nature and habit of the countries. In the western parts of the world alien merchants mix in the society of the natives; access and intermixture are permitted, and they become incorporated to almost the full extent. But in the East, from the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of

of the nation; they continue strangers and sojourners, as all their fathers were. 'Doris amara suam non intermiscuit undam.'"

Now, if the temporary national character of the alien was English, it should seem that the *lex loci* under which he was temporarily living, must also have been English, even though that law had never been introduced by any express legislative provision. And again, if the *lex loci* of an English factory in the Mogul's dominions be, upon general principles, English, it should seem that the *lex loci* of a dominion of the British Crown acquired from the Mogul must, upon the same principles, be English. And accordingly Lord Stowell, when he dismisses the assumption which he had made for the sake of argument, and considers Calcutta as a part of a British dominion in India, thus expresses himself: "The law of treason, I apprehend, would apply to Europeans living there in full force; it is nothing to say that some particular parts of our civil code are not applicable to the religious or civil habits of the Mahomedans or Hindoo natives, and that they are on that account allowed to remain under their own laws. I say this is no exception; for with respect to internal regulations, there is amongst ourselves in this country a particular sect, the Jews, that in matters of legitimacy, and on other important subjects, are governed by their own particular regulations, and not by all the municipal laws of this country, some of which are totally inapplicable to them."

Here then we have this very eminent publicist putting the existence of the Hindoo and Mahomedan laws in British India upon the same footing as the existence of the Jewish law in England. Then, if there is nothing to prevent English law from being the *lex loci*, except the existence of two communities whose legal condition is similar to that of the Jews in England, it should seem that English law is the *lex loci*.

This doctrine laid down by Lord Stowell has been fully recognised and adopted by judicial authority in India. In the case already mentioned of General Martin's charity, Sir Edward Ryan, in deciding upon certain exceptions which had been taken to parts of the Master's report, observed, that under the decree the Master was directed to inquire and report what was the domicile of the testator, and whether by the laws and usages obtaining at Lucknow, the inheritance and succession of and to the real and personal estates of deceased persons being European Christians, are regulated by the Mahomedan law, or by the laws of the place and country of such deceased persons, or by what other law or usage. "In the present report," Sir E. Ryan said, "the Master has stated that in his opinion General Martin was domiciled at Lucknow; but he has wholly omitted to inform the court by what law the inheritance and succession to his property is to be governed. The only reason the court could require from the Master a report on the domicile, was to know in what manner the property was to be distributed."

After having attentively perused the whole of the evidence given in this case, Sir E. Ryan said, "that he was of opinion that General Martin was not domiciled at Lucknow, which is a Mahomedan country, and to which therefore the observations of Sir W. Scott in the case of the Indian chief closely apply." He then cited the same passage which we have cited above, and added that "in the appendix to that case, the certificates of the councils at Smyrna establish the same point."

This case, it will be seen, goes a step further than that of the Indian chief, though in strict accordance with the principles which were there laid down.

Lord Stowell held that an European, domiciled in an European factory within a Mahomedan dominion, takes his temporary national character from the European factory, because the Mahomedan dominion cannot impart such temporary national character. Sir E. Ryan deduces as a consequence from this, that an European Christian resident in a Mahomedan dominion, and not in an European factory, cannot acquire a domicile in that dominion so as to make his personal estate distributable according to Mahomedan law; and if that be so, it should seem that nothing but the intervention of a competent legislature can make an European generally subject to or entitled to Mahomedan law, according to the principles of any but Mahomedan jurists.

The doctrine of these cases seems scarcely reconcilable with that of Lord Mansfield, in Campbell *v.* Hale. If the Mahomedan law extends itself over all strangers in a country under Mahomedan dominion, what becomes of the "immiscible character" upon which Lord Stowell insists? And why should not

a Christian acquire a domicile in such a country as easily as in a country in which law and religion are distinguishable things?

It is true that, according to the principles of Mahomedan law, it not only does extend itself over all strangers, but never gives place to any other law; but this, as we have said, is a pretension which can never be admitted as a doctrine of international jurisprudence, in which the privileges and disabilities of nations and of their systems of law must be reciprocal.

It will be seen, moreover, that a very eminent chief justice of the Supreme Court has expressed himself, extra judicially indeed, but still upon a solemn occasion, as if he hesitated to admit some of the consequences which are deducible from Lord Mansfield's principle.

The eminent person of whom we speak is Sir Edward Hyde East, who in his evidence before the Select Committee of the House of Lords, says, "The Portuguese, Armenian, and other Christians of native or foreign extraction, together with the half-caste or illegitimate Christian children of British fathers by native women, form a very considerable and important class, which for several purposes is out of the pale of British laws, though not within the Hindoo or Mussulman rules."—p. 152.

Further on he says of the last-mentioned class, "It is worth while to consider in what condition these persons are, if they be not British subjects; they are native-born, and cannot upon any common principle of justice be debarred from colonizing in their native and only country. What is their law of inheritance or succession or marriage out of the precincts of Calcutta? Can the Hindoo or Mahomedan laws be administered to them as Christians?"

Sir Edward East would hardly have put this question, if he had felt that he could rest with perfect security upon Lord Mansfield's doctrine.

The convention made at Versailles on the 31st August 1787, between his Britannic Majesty and the Most Christian King, has some bearing on this subject. The language of that convention seems to indicate that both the high contracting parties understood that English law was the law of all persons in British India not Hindoos or Mahomedans. By that convention his Britannic Majesty "engaged to take measures to secure to French subjects without the limits of the ancient factories above mentioned (the ancient French factories) an exact and impartial administration of justice in all matters concerning their persons or properties, or the carrying on the trade, in the same manner and as effectually as to his own subjects."

It seems clear that the object of this stipulation was not to save French subjects from Hindoo and Mahomedan law, but merely to secure to them an exact and impartial administration of the law to which they were already entitled. This could be no other than English law, and Frenchmen could not have become entitled to English law through the charters and statutes; for if so, they must *à fortiori* have been already entitled to the same exact and impartial administration of it as had been provided for British subjects.

It appears that a Bill to accomplish the object of the convention, by giving to the Supreme Court civil and criminal jurisdiction over Frenchmen, was prepared in the year 1788 by the Advocate General*, and transmitted to the Court of Directors. Whether it was ever brought into Parliament we are not informed.

This leads us to the consideration of another circumstance which has contributed to perplex this difficult question. Although it is not easy to suppose that His Britannic Majesty, by engaging to take measures to secure to French subjects an exact and impartial administration of justice, meant that he would give them the benefit of a law to which they were not before entitled, still the measure of giving to the Supreme Court jurisdiction over Frenchmen would, besides accomplishing what the King had engaged to do, have had practically, as will presently appear, the effect of giving them English instead of French law.

It is to be observed, that the Company's courts are, in respect of all persons not Hindoos and Mahomedans, not courts of law, but mere courts of conscience.

The only laws which those courts are empowered to administer are the Mahomedan law to Mahomedans, and the Hindoo law to Hindoos, in suits regarding succession,

* Slavery in India 1828, p. 39. By a Regulation passed on the 27th August 1788, Frenchmen were exempted from the jurisdiction of the mofussil criminal courts; but this exemption is omitted in the Regulation of 1793, and has not been in force since that time.

succession, inheritance, marriage and caste, and all religious usages and institutions. Regulation IV. of 1793, Section 15.

In cases for which no specific rule may exist, the judges are directed to act according to justice, equity, and good concience. Regulation III. of 1793, Section 21. This Regulation applied only to Bengal, Behar, and Orissa, but it has been since extended to the other provinces of this presidency, and has been adopted in the Madras Regulations.

By Section 9, Regulation VII. of 1832, it is provided, that whenever "in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahomedan persuasion; or where one or more of the parties to the suit shall not be either of the Mahomedan or Hindoo persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

The provisions relating to this subject in the Bombay code are to be found in Regulation IV. of 1827, Section 26: "The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and in the absence of specific law and usage, justice, equity, and good conscience alone."

Section 27, Clause 1: "When in any matter depending on the peculiarities of Hindoo or Mahomedan law, a doubt arises regarding such law, the court, in aid of its judgment, shall consult the officer or officers appointed to expound those laws respectively, in the manner prescribed in Regulation II. of 1827, Section 13, Clause 3."

Clause 2: "When in any matter depending on the peculiarities of any other law, or of a rule or usage of a sect or caste, a doubt arises regarding such law, rule, or usage, the court shall ascertain the same, by examining persons versed in such law, or the heads of such sect or caste, or other well-informed persons."

Political considerations similar to those which prevented this government from coining money with the head of the British King, but which have now ceased to operate, have no doubt also prevented the legislature from saying what is the *lex loci* of this country, and it has seemed the less necessary to do so, as the Supreme Courts hold themselves bound by their charters to administer English law, when there is no express provision to the contrary, and as the mofussil courts are all courts of conscience.

But although the mofussil courts are courts of conscience, their position in respect of law is not analogous to that of the courts which in England now bear that name; those are courts for the recovery of small debts and nothing more, and such courts can very well decide the cases within their competence with little or no reference to any law; but the courts in the mofussil have to decide upon all kinds of rights, not only those which are the same in all countries, but those which, depending upon mere positive institution, are different in different countries. A man who borrows money and refuses to repay it, acts unconscientiously, whether he does so in England or in France. But a man who withholds from his younger brothers a share of his deceased father's land, acts conscientiously in England and unconscientiously in France. In these cases, as one of our old law books expresses it, "the diversity of law maketh the diversity of conscience." Before, therefore, a court of conscience can decide a question of this latter sort, it must know under what law the parties are living.

The position of the mofussil courts, therefore, in regard to law, is much more analogous to that of those courts of conscience in England which have now got the distinctive appellation of courts of equity. The mofussil courts, in order to decide rightly, must and do adopt that maxim on which the English courts of equity act; viz. that equity follows the law. Surely, therefore, it is of importance that a judge in the mofussil should know what law it is that his equity is to follow.

It is quite true that, if English law is the *lex loci*, the mofussil courts, from unavoidable defect of technical knowledge, must find considerable difficulty in shaping their equity according to that law. But it is equally true that, if there is no *lex*

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loci, their difficulties, though not exactly of the same kind, must be, in some respects, much greater; for upon that supposition their equity may have, upon occasion, to follow every law in the world; and very frequently before they can decide what law their equity is to follow in any particular case, they must decide difficult questions of mixed fact and law. Questions of pedigree, which are those that will arise upon such occasions, take up more time in the investigation, and give less satisfaction in the decision, than perhaps any others.

In addition to these most difficult questions of mixed fact and law, the mofussil courts must have also to decide frequently questions upon the conflict of laws, well known to be among the most puzzling which exercise the skill of jurists.

No courts can indeed altogether avoid these questions, but they must necessarily spring up in the greatest abundance in a country where there is no *lex loci*.

Again, by far the greater number of cases in which equity in this country must follow some law, are likely to be cases in which it must follow English law, because Englishmen and their descendants are likely to be much more numerous in India than any other persons not Hindoos or Mahomedans.

Now, if English law is not the *lex loci*, it must be considered in the condition of any other foreign law, and the mofussil judge would not, according to established principles, be justified in deciding upon his own knowledge of it, but ought to require in each case that the party alleging the English law should prove by documentary evidence or by testimony that the law is what he alleges it to be. This course might relieve the judge from some responsibility, but it would surely be very prejudicial to the interest of the suitors.

The mofussil courts have had to decide some cases, though hitherto probably very few, in which they have felt that the equity they are to administer must follow some law.

The doctrine they have adopted is, that there is no *lex loci* in British India, and their practice has been to ascertain in the best manner they could, what was the law of the country of the parties before them.

By this doctrine and practice the remarkable state of things mentioned by Agobardus is reproduced. In this country it would be easy to assemble many more than five persons of whom no two follow the same law. But besides this necessary consequence, the doctrine and practice in question gave rise, in the peculiar circumstances of British India, to many other strange difficulties and anomalies.

First, there is the singular consequence alluded to above, that the measure of bringing Frenchmen under the jurisdiction of the Supreme Court would have deprived them of French law, or at least of equity following French law; a change which the French nation could hardly have looked upon as a boon, and for which the French King could hardly have intended to stipulate.

Another very singular consequence is produced by the limitation which this doctrine and practice receive from the principle that all British subjects (technically so called) are to have English law administered to them. We mean the consequence, that the Scots alone of all the nations upon earth, are not entitled to have any regard paid to the laws of their country in the adjudication of their suits by the mofussil courts. This, however, though monstrous in theory, is no practical grievance; the anomaly is not that the Scots in India are brought under English law, but that people of other nations in India are not brought under it.

That the law of Scotland is thus excluded from the mofussil courts might perhaps be inferred from the case of Fernandez *versus* De Silva and another, cited below, where it will be observed, that, although the Sutherlands were Scotsmen, yet no doubt seems to have occurred either to the Sudder Dewanny Adawlut, or to the Advocate-general, as to the applicability of English law to them as British subjects. As, however, the point was not raised in that case, we should not speak confidently upon the strength of that inference alone. But the admission of Scots law into the mofussil courts in the suits of Scotsmen, would involve a much greater anomaly than the opposite course, and a really intolerable practical inconvenience. For, as Scotsmen are British subjects, and therefore amenable to the Supreme Court, not only when within its local jurisdiction, but also when resident in the mofussil, they would actually be living at the same time and place under two different laws. Every Scotsman would have English or Scots law applied to him, according as his antagonist thought fit to sue him in the Supreme Court, or in the court of the district where he might be residing.

But the case of all persons who are cut off, by the illegitimacy of themselves or their ancestors, from all legal connexion with the country from which they sprung,

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is left unprovided for by this doctrine of personal laws. All such persons (and these petitioners are such) whose native and only country is British India, have certainly a right to ask, not in vain, of the legislature, that if there is a *lex loci* it should be declared, and that if there is not, one should be enacted.

The case of the Armenians, too, is left unprovided for by this doctrine. They are not indeed cut off by illegitimacy from the country of their national origin. But, as the Armenians of this presidency stated in a petition to the Governor-general in Council on the 10th September 1836, their race "has long ceased to be anywhere a nation." If they ever had any law derived from Armenia, it must apparently have been the Roman law, for their ancient law appears to have been abrogated by Justinian.

The title of the 21st Novel is, "De Armeniis, ut et illi per omnia Romanorum leges sequantur." *

The special object of this Novel was to substitute the Roman law of succession for the Armenian, which excluded females. But it seems clear from the emperor's expressions that it was only the last step of a series of changes by which the Armenian nation had been brought under the Roman law; or, perhaps a change which, on account of its peculiar importance or the peculiar reluctance of the people to adopt it, was thought to require special provision; while general words were considered sufficient to effect the desired substitution in other respects.

This law was enacted in the year 536, and, excepting an edict of the preceding year, it is all we have been able to find respecting the legal history of Armenia. This edict is to the same effect as the Novel above-mentioned, and shows by its preamble that the barbarous and uncommon law (barbaricam et insolentem legem), as the emperor calls the Armenian law of succession, had only lately been brought to his notice.

But whatever law the Armenians had at the time when they ceased to be a nation, it appears to have fallen into desuetude, and even into oblivion. In the petition above mentioned, they say amongst other things, "In the courts of the Company no settled rule of law whatever has prevailed in respect to the inheritance and succession to property of deceased Armenians. While some of the Company's judges follow the course of the King's court, and adopt the rules of English law, others hold themselves bound to act upon their individual notions of equity pursuant to the terms of Regulation VII. of 1832, Sec. 9, and others bewilder themselves in the vain endeavour to discover the law of Armenia, of which there is no trace extant, and refer to Armenian ecclesiastics, whose legal knowledge, when they have any, is limited to the bare rudiments of the canon law." †

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* The original is Greek; we quote the Latin version.

† Since the observations in the text were written, our secretary, Mr. Sutherland, has received from Mr. Avdale, an Armenian gentleman, well versed in the literature of his country, a paper on the laws and law books of the Armenians.

From that paper it appears, that since the epoch of Justinian's legislation, two codes of Armenian law have, at different times, been compiled. The first is said to have been compiled under the auspices of the Armenian king, Johannes Bragratian, about the year 1046, and is known only through the medium of a translation made into Latin, in the year 1548, by order of Sigismund the First, king of Poland, into whose territories a body of Armenians had emigrated in the eleventh century. The second is the compilation of Mechithar Ghosh, a learned Armenian, who flourished in the end of the twelfth and beginning of the thirteenth centuries. According to this writer there was, in his own times, a total absence of laws and law books among the Armenians, and he was stimulated to the preparation of his code by the reproaches which this destitute condition drew upon his country. "Why were we disposed," he says, "to compile this book, or what incentives induced us to resolve on framing this code?" and among the reasons which he assigns, in answer to this question, are the following: "That we have been accused not only by unbelievers, but by Christians also, of a total absence of law books based upon the principles of Evangelical laws." "That lest, from the non-existence of a written law, the Armenians should apply or appeal to unbelievers for justice." From this statement of his reasons it may be conjectured that the object of Mechithar Ghosh was to deduce a system of jurisprudence from the Jewish and Christian Scriptures, in the same way as the Mahomedan jurists have deduced one from the Koran. A copy of this book exists at Venice; but neither of this nor of the preceding code does any copy exist in India.

In a late case, however, in the Sudder Dewanny Adawlut, a MS. Armenian law book was produced as an authority to Mr. Wigram Money, one of the judges of that court; Mr. Money referred the book to the late Mr. James Prinsep, in order that, through his acquaintance with the literary members of the Armenian community, he might obtain an opinion upon the character of the book, and a correct translation of the passage relied upon. Mr. Prinsep consulted Mr. Evdale, who informed him that the book was written or transcribed in the year 1686, and that "the materials of which it is composed are derived from the Old and New Testaments, and from other ancient records."

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The Parsees, also, are nearly in the same condition, except that in losing the memory of the laws to which they were subject when they fled from their native country, they appear in some places to have borrowed customs from the Hindoos.

When these cases are considered, it will be seen that, though British India may appear, on the one hand, to have less need of a *lex loci* than any other country, because the great mass of its population consists of two sects whose law is contained in their religion; yet, on the other hand, there is probably no country in the world which contains so many people who, if there is no law of the place, have no law whatever.

Indeed, whether we look at reasons drawn from jurisprudence, or at reasons drawn from convenience and utility, there is no doctrine more certain than this; that in every country there ought to be a law which is, *primâ facie*, applicable to every person in it. The number of classes which, in any particular country, should be exempted from this law, must always depend upon the circumstances of that country; but, be these classes few or many, small or large, the necessity of a law for persons whose condition cannot be defined beforehand, or who cannot be brought by evidence within any of the defined classes, remains undeniable.

We find four cases in the Reports of Cases in the Sudder Dewanny Adawlut of Calcutta, and one in those of the Sudder Dewanny Adawlut of Bombay, which will exemplify that doctrine and practice of the mofussil courts of which we have been speaking.

We shall arrange these cases, not in the order in which they occurred, but in that most convenient for our present purpose.

We must observe, that we have not found any case deciding upon the rights of that class to which the petitioners belong.

There are three other classes of persons in this country whose legal condition seems to us to require definition by legislative provisions.

1. All foreigners, not being Hindoos or Mahomedans.

2. Subjects of Her Majesty, not being British subjects in the narrow and technical sense of the term, and not being Hindoos or Mahomedans, among whom the Portuguese are remarkable from their numbers, the Armenians from their numbers and wealth.

3. British * subjects in the narrow and technical sense of the term.

Following this arrangement, we shall cite first the case of Mr. R. Durand, &c. *v.* Julien Boilard, &c. vol. v. p. 176.

In this case, which was an appeal from the Provincial Court of Patna, Jean Baptist Le Breton, a native of St. Maure in Britany, in France, was settled as a merchant in Patna, where he died in 1814. He made a will, by which, among other things, he bequeathed 10,000 sicca rupees to his two brothers in France.

Mr. C. Smith, who first heard the case, observed, that "they (the two brothers) must

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Mr. Evdale notices, in his answer, the two codes above mentioned, and then proceeds as follows:

"As neither of these law books has found its way to India, I am unable to say whether the volume you have sent me is a transcript of the one or the other, for the name of the author or legislator has unfortunately not been inserted therein. I am, however, inclined to think it to be a compilation from both; but cannot take upon myself to say whether it is one of established legal reputation in Armenia. It is greatly to be regretted that the code of Mechithar Ghosh has never been printed or published to this day. This, under existing circumstances, is certainly a very serious evil to the Armenians living under the jurisdiction of our zillah courts."

Avietic Ter Stephanos, after his death, Gabriel Avietic Ter Stephanos, *v.* Ana Bibi, wife of Ithawaj Arratoon Ter Stephanos.

The judgment of the Court of Sudder Dewanny Adawlut appears, by a report * of the case, made by our secretary, Mr. Sutherland, to have been founded partly upon this manuscript book.

We can readily sympathise in Mr. Evdale's regret as a zealous antiquarian, and as a member of a nation long exiled from its original seat. But we cannot agree with him in thinking it a very serious evil, in a legal point of view, that neither of these ancient codes has been made accessible to the Armenians of British India, and to the courts which decide upon their rights.

On the contrary, we are disposed to consider the admission of this transcript of one of those codes, or this compilation from both of them (whichever it may be), as law by which the present generation of Armenians is to be bound, in the light of an evil requiring remedy. We look upon it as an additional argument for the conclusion at which we have arrived.

The Armenians complain most reasonably, in their petition, that they are without laws. But now they are not only without laws, they are moreover in peril of having the laws of King Johannes Bragratian, or of Mechithar Ghosh, made to operate, *ex post facto*, upon contracts and dispositions framed in absolute ignorance of what those legislators may have provided.

* Although English law is administered to British subjects by the mofussil courts as a personal law, and although, in our opinion, the same law ought to be administered to them as a *lex loci*, stil the dictum in the case of Campbell *v.* Hall throws so much doubt upon their legal condition, that it may properly be said to require definition.

must be presumed in reason, and under the French law in regard to absentees, to have died before the date of the will; for their disappearance for more than 40 years prior to 1819 is inferrible. Under the French law (that of the parties) a bequest to a deceased person does not devolve on his heirs."

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"For the decision of this case in this point (a point having no bearing on our subject) must be ascertained; as also the distribution of personal property in case of intestacy under the French law, when a widow and collateral kin may concur."

The case was accordingly postponed, and the judge of Hooghly (selected, no doubt, on account of vicinity) was directed to obtain the opinion of the law officer of the government of Chandernagore. The opinion of that officer was obtained, and judgment given in accordance with it.

Upon this case it is to be observed, that the received rule respecting the succession to personal property is, that it follows the *lex loci* of the country in which the deceased was a domiciled inhabitant at the time of his death, without any regard whatever to the place either of birth or death, or the situation of the property at the time; and it is possible that Le Breton was not domiciled at Patna. But, as the court do not advert at all to the question of domicile, it is to be presumed they thought that no residence at Patna could have the effect of substituting any other law for the law of Le Breton's French domicile, or, in other words, that there is no *lex loci* at Patna.

With respect to the mode of ascertaining the French law, the court appear from the report to have felt themselves competent to say for themselves what the French law is as to the presumption of death from absence, and as to the effect of a bequest to a person deceased, and to have thought it necessary to consult the Procureur du Roi at Chandernagore only upon the question of distribution.

II. The next case is that of Avietick Ter Stephanus *v.* Khaja Michael Arratoon, 3 Sudder Dewanny Rep. p. 9.

As, according to the note of the learned reporter, "the decision in this case seems to have been passed, not so much with reference to the principles of the Armenian law regarding succession to property, as to the fact of the virtual acknowledgment by the respondent of the rights of the individual through whom the appellant claimed," we shall not do more than extract the following passage, which contains the only part of the case illustrative of our subject, and is sufficiently intelligible of itself:

"On the 24th of July 1818, the claim of the plaintiff was dismissed by the fourth judge of the Dacca Court of Appeal, on the grounds that Susan Bebee had no right of succession; that the claim of the plaintiff through her was consequently groundless; that admitting her to have the right of succession, it was not competent to her, after having made a disposition in favour of the defendant for a valuable consideration in the year 1803, to make another in favour of the plaintiff in the year 1807." An appeal having been preferred from the above decision to the Sudder Dewanny Adawlut, the court deemed it necessary to consult the Bishop of Armenia on the law of the case, and the following question was accordingly propounded to that dignitary: "*A.* dies intestate, leaving *B.*, a natural son, *C.*, an uncle, and *D.*, the daughter of an uncle, who was the elder brother. *A.*, during his lifetime, acquired the estate from his own exertions, without assistance from any hereditary property, and verbally acknowledged *B.* as his son and successor. To whom, or in what proportions, does the acquired estate of *A.* devolve on his demise by the Armenian law or custom?" The bishop's reply was in the following terms: "As *A.*, during his lifetime, acquired the estate from his own exertions, without assistance from any hereditary property, he had consequently the sole right of the disposal of his own acquirements freely and voluntarily as he pleased, or to constitute a representative thereto. And, as you observe, *A.* died intestate, and verbally acknowledged *B.* (a natural son) as his son and successor, I presume by this *A.* had no legitimate son. The property in this case no doubt devolves on *B.*, the acknowledged successor of *A.*, in preference to *C.* and *D.* The proportioned claims of an uncle and an uncle's daughter, would have been grounded had the property been patrimonial."

III. The case in the Reports of Civil Causes adjudged by the Sudder Adawlut of Bombay is that of Mrs. E. Humrus *v.* Mr. J. Humrus. It was a suit instituted in the Zillah Court of Surat by a wife against her husband (from whom she had been separated for 30 years) for maintenance, both in respect of the past and the future.

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"The court conceived it essential first to determine by what law the case was to be tried."

"The parties stated themselves to be of the Armenian church, and to have been married according to the rites."

After the Armenian archdeacon had given evidence as to the law, "the court gave time for the parties to come to an amicable adjustment. This failing, the cause was brought on for trial, when the court observed, that the evidence of the archdeacon was so much against what would reasonably be conceived to be the right of a Christian wife, that some suspicion might be entertained of the partiality of the witness. Nevertheless, custom and law might be as he had stated it, the intention and object of its harshness being to keep the wife in subjection, in conformity with the prejudice of all oriental people. It was therefore held that appellant could not recover the arrears she sued for, laid at *Rs.* 45,000, but that she was entitled to a future maintenance so long as she remained in separation from respondent. To fix, however, the exact amount of the alimony to which appellant was entitled would be difficult. In a conversation which then ensued with respondent, he agreed with the court to allow the monthly sum of *Rs.* 40, provided the appellant continued to live separate from him."

The court decreed accordingly, and from its decree the wife appealed to the Sudder Adawlut.

"The sitting judge referred the case to a competent court, with his opinion that it (the alimony) should be raised to *Rs.* 60 per month."

"The court having neither peculiar custom nor precedent for its guide in judging what might be a suitable maintenance for appellant, and being thus left to its discretion, was inclined to fix upon a medium between that determined on by the zillah judge in the first instance, and that by the chief judge who sat on this case. The zillah court's decree was, therefore, so far amended as to fix *Rs.* 50 per mensem instead of *Rs.* 40." Borrodaile's Reports, II. 496.

These two cases not only illustrate the practice of the mofussil courts, but confirm, we think, the complaint of the Armenians as to the vanity of the attempt to find out an Armenian law by the examination of Armenian ecclesiastics.

IV. Next is the case of Joanna Fernandez *v.* Dominga De Silva and Anthony Libra, vol. 2, Sudder Dewanny Report, page 227, by which it will be seen, that in 1791 the Court of Sudder Dewanny Adawlut determined that the estate of Charles Sutherland (whom the court then no doubt considered as a Portuguese) should be divided among his surviving heirs in such proportions as should be found to be consonant to the customs and usages of the native Portuguese in this country."

In a later stage of the proceedings, viz. in 1794, the same court, after consulting several persons conversant with the Portuguese law of succession as applicable to the case, and being advised by them, passed a provisional judgment accordingly.

In another suit respecting one moiety of the same estate, which came before the Sudder Dewanny Adawlut upon appeal from the provincial court, it appearing clear from all the evidence that Herbert Sutherland (the father of Charles Sutherland), the original grantee of the estate, was a British subject, reference was made to the Advocate-general, who gave his opinion "that Charles Sutherland's estate could only (although his wife was a Catholic) descend to his heirs according to English law; that under the circumstances, there was no heir to him existing, and that the real estate escheated, subject only to the widow's dower." The officiating Advocate-general, who was afterwards referred to, declared his opinion that that estate would revert to the Honourable Company, and not escheat to the Crown, and a final decree was made accordingly.

Now, as there is no principle of general law more clearly settled or more universally recognised than this, that the succession *ab intestato* to immoveables or real property is wholly governed by the *lex loci rei sitæ*, the Court of Sudder Dewanny Adawlut must be presumed in this case to have held that there was no *lex loci* of the place where this estate was situated.

This case shows strongly the difficulties in which the courts may be placed in ascertaining the provisions of a foreign law.

Believing that Charles Sutherland was a Portuguese, the court consult several persons conversant with the Portuguese law of succession, and make a decree in accordance with the advice of those persons, which disposes of the estate quite differently from what the English law would have done. Yet the reporter informs

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us in a note, that " had this case been decided according to the law of Portugal, the decision would have been the same (as the decision according to English law), as it appeared from a communication with some professors of the law at Goa (who were latterly consulted) that by a special law in Portugal, termed the Mental, and applicable to this case, all grants made by the Crown, and sub-grants made by great donees of the Crown, become escheats on failure of the legitimate descendants of the original donee, relations not in the direct line being excluded."

The mode of ascertaining the provisions of the English law by consulting the Advocate-general, is perhaps practically the best that could be adopted under the circumstances, if the parties are not precluded from contesting the correctness of his opinion.

V. The last case is that of T. Hoo (attorney of Thomas Hutt, deceased) *v.* Peter Marquis, 4 Sudder Dewanny Reports, p. 243; and it is the most important of the five for the illustration of the subject under discussion. The facts of the case are thus stated by the Court of Sudder Dewanny Adawlut, when requesting the opinion of the Advocate-general upon the law:

" Thomas Hutt, an Englishman (in the pilot service), died in 1792 at Calcutta, leaving a widow, Lucy Hutt (a native of India), and Thomas Hutt, a son of the marriage, then a minor; and he left property consisting of two houses within the town of Calcutta, and one house, with one beegah, seventeen biswas of land, without the town at Entally, and sundry personals, besides about 1,000 rupees in cash. Letters of administration were granted to the widow (the deceased having died intestate) by the Supreme Court, in the same year. On the 7th March 1800, the widow, as administratrix, sold the house and ground at Entally to Peter Marquis (not a British subject) for 500 rupees, and possession was given accordingly."

" In the year 1811 the son (T. Hutt, jun.) became of age; and in 1818, but not before, brought a suit in the zillah court of the suburbs against Peter Marquis, then and now a resident of the suburbs, to set aside the sale as made without due authority."

" A pottah seems to have been taken out by the purchaser in the usual form, and after the usual proclamation and notice from the collector's office in 1815, and no hindrance seems to have been offered by Hutt, jun.; he alleges that he did not know of it."

" From the evidence in the case, the court infer that the sale by the administratrix was not an indiscreet or unnecessary one; that it was made with a view to effect repairs in the two Calcutta houses, and for a purpose beneficial to the estate; and that the chief part of the proceeds was so applied, and no part applied to any unfit purpose; and the price, according to the rates of the time, though they are now higher, was not an inadequate one."

The court then request the opinion of the Advocate-general, " whether, under these circumstances, and considering the long possession of the purchaser under the sale, and the non-molestation of the minor for several years after he became of age, the court would be justified, under the English law, in upholding the sale, and leaving the son to get an account of the application of the proceeds from the executrix, or whether the sale must, at all events, be held invalid; that is to say, whether decisions hitherto made by the Supreme Court recognise or not sales of land by an administrator; and, if they do, whether the ground is narrowed to sales for the actual payment of debts, or is generally for purposes beneficial or necessary to the estate."

" It should be observed, that in the case in question the estate was not insolvent; nor, as far as appears, had there been when the sale took place, nor has there been since, any separate assignment of the respective rights of the widow and the son in the estate."

The reply of the Advocate-general was to the following effect:

" There has been so much difference of opinion in the Supreme Court upon the various questions connected with real property in this country, that I feel some hesitation in giving my opinion on the case submitted to me from the Sudder Dewanny Adawlut; I believe, however, that it never has hitherto been decided that an administratrix of an intestate estate could make a good title to a purchaser of any of the real property of the intestate, if he died solvent; and if lands in the mofussil are to be considered in any degree in the light of estates in fee-simple, which seems to have been held in the case of Gardiner *v.* Fell, 1 Jacob and Walker, 22, I do not know how such an administratrix can convey such an estate. My own opinion is that she cannot, and that this vendee, under her conveyance,

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veyance, may at any time within 20 years be ousted by ejectment; I am consequently of opinion that the court would not be justified, under English law, in upholding the sale in question. But it seems to me, that exercising (as I understand the mofussil courts to do) an equitable as well as legal jurisdiction, the Sudder Dewanny may well require the heir-at-law to account for and refund to the purchaser such portion of the purchase-money as shall be proved to have been expended for the benefit of the heir-at-law, on any other property to which he also succeeds; and if it can be shown that he inherited from or took under the will of his mother any property sufficient to make good the amount of the purchase-money, I think it would be consistent with the rules of English equity to compel him to refund the whole amount of such purchase-money, with interest of course, setting off such reduction against the mesne profits."

"Having perused the above reply, and taken into consideration all the circumstances of the case, the chief and fourth judges recorded their opinion that the decree of the provincial court should be reversed, and that the appellant should recover possession of the land sold, on condition of his paying, within the period of six months from that date, the amount of the purchase-money paid by the respondent to Lucy Hutt. Final judgment was passed accordingly. The decree did not provide for payment of interest, the court deeming it probable that the mesne profits had exceeded the interest on the purchase-money, and it being deemed advisable to leave that question open to future adjustment. The appellant and Lucy Hutt were left to adjust between each other the proportion in which each was to contribute to the refund."

The view which the mofussil courts took of their duty was certainly a very natural one. As British subjects were not originally subject to the jurisdiction of the mofussil courts, and as the Indo-British race had not sprung up when they were first established, it would have seemed a strange course, though we believe it would have been a correct one, to administer English law, or a system of equity moulded upon it, to the French, Dutch, Spaniards, and Portuguese, and their mixed descendants, who were to be found in the country.

As long as such a state of things existed, it was not of much immediate importance to determine what was the *lex loci*, or whether there was any.

But now the time has surely come when it is incumbent upon the government to consider and decide this question. The Charter Act has thrown open India to British subjects. The Act No. XI. of 1836 has made them amenable, in all civil cases, to the mofussil courts. The Act No. IV. of 1837 has enabled them to hold land. The Privy Council has solemnly decided that aliens are also competent to do so.

The trade between India and the countries of the west is regularly increasing, and with it the influx of European and American foreigners. The East Indians have become a numerous population, and are every year becoming more so. The want of a *lex loci* will soon become as mischievous in practice as it is anomalous in theory.

The English law, already the law administered to a great portion of the new population in the mofussil, and to the whole of that population in the presidencies, affords a ready and commodious resource. That it is a ready resource is obvious; that it is a commodious one is not so clear, but may, we think, be made so by a little consideration. If we exclude English tenures and English conveyancing, which is founded upon them; and if we separate the rules of substantive law from the rules of procedure by which they are enforced, and in particular from those rules of procedure by which equity is made to modify law, what remains is a system of substantive law to which, we believe, no Christian people could reasonably object. With regard to those who are not Christians, it will be proper to make a further separation of the law of marriage, divorce, and adoption.

The case which we last cited from the reports of the Sudder Dewanny Adawlut is valuable not only for the purpose for which we have used it, but for the more important purpose of exhibiting in practice, what is indeed already clear enough in theory, that English law and English equity may be administered harmoniously instead of discordantly, and also, as far as may be done by one case, what sort of a system they make when so administered.

We firmly believe that English law, taken together with the supplement and corrective of English equity, constitutes a body of substantive law which is not surpassed in the qualities for which substantive law is admired, by any of the various systems under which men have lived. We are, indeed, persuaded that a code framed

framed out of these materials would be a better thing than the materials in their present form; but we know of nothing else that would be better. Yet, notwithstanding these great merits, the rude and cumbrous way in which supplement and corrective of equity is applied to law, the intricate, expensive, and dilatory proceedings which the suitor must have recourse to before he can get the rules of law, or of equity, or of both, applied authoritatively to his case, and the facility which is thus afforded to each party to vex and harass his antagonist, form such an enormous drawback to the merit of the whole *corpus juris*, substantive and adjective taken together, that we should be very sorry to lie under the responsibility of having recommended the introduction of it into any place where it is not *de facto* established. Two sets of courts, one set prohibiting the suitor from proceeding in the other set, or if too late for that, taking from him what the other set has awarded him, is an arrangement which cannot be contemplated with any satisfaction by those who desire that justice should be administered speedily and cheaply, and in a manner intelligible to the people. Yet that is a true account of the relation in which courts of equity stand to courts of law in the English system, and in the modification of that system which has been introduced into the Indian presidencies, the anomalous and extravagant features are exaggerated beyond those of the present institutions.

That the Chancellor should order a man not to apply to the courts of law for his legal rights; that the courts of law should be bound to affect neither to know nor care when the Chancellor has done so or not; that the Chancellor should not be permitted to hear *vivâ voce* evidence, but should be obliged to send his suitors to ask the courts of law to do it for him; that the courts of law in their turn * should not be permitted to order witnesses to be examined by commission, but should be obliged to send their suitors to ask the Chancellor to do it for them; these, and other things of the same stamp, do not look like the productions of political wisdom. We know, in fact, that the only explanation which can be given of them is not to be sought in jurisprudence, but in history.

But the copy of these things which has been established in the presidencies of India bears still fewer marks of design. It might actually happen, according to established rules, that the judges of the Supreme Court sitting in equity should command a suitor not to apply for justice to themselves sitting at law; and that if the suitor should disregard the command, and make the application, they would be bound to be ignorant of what they had done when sitting in equity, and to refuse to pay any attention to it, or even to listen to the statement of it. It is true that this case is never likely to be realized in practice. But arrangements so unreasonable seem to us calculated to bring the administration of justice into contempt, even if they produced no practical mischief. How much more when, as in a case which has lately been decided at this presidency, the unreasonableness of the institutions may be traced in its mischievous effects upon the fortunes of the suitors.

The case we speak of is that of Goopee Mohun Deb *v.* The East India Company. It is a case which exemplifies in a very remarkable degree, and in very many respects, the evils of English procedure. But we shall notice upon this occasion only such parts of it as illustrate the mischievous way in which law and equity are separated. In April 1824, the plaintiff filed a bill in equity. The suit lasted till June 1840, when the bill was dismissed, upon the ground that the plaintiff's remedy, if not barred by lapse of time, was at law. This seems to have been suggested in an early stage of the cause by the then chief justice, but to have been doubted by another judge. In the course of the suit, a vast quantity of evidence was taken, not upon the merits, but upon the question whether certain parties should be added to the Bill. "For three years and a half," says Chief Justice Ryan, "the parties had been in the examiner's office, and an immense mass of evidence, which is now before us, collected." This mass of evidence was not only not upon the merits, but was upon a matter which ought not to have been contested, and the taking of it might have been prevented by either party. The chief justice describes it as "a most expensive and unusual proceeding, which by his, the complainant's own conduct, he has shown to be utterly useless." He afterwards states his view of the course which the defendants ought to have adopted on

* This has been remedied by a late statute, but it is characteristic of the plan; if that is the name applicable to such a distribution of judicial powers.

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on this point, and adds, "If I am correct in this view, then the useless expense and unusual proceeding in going to the examiner's office on the pleas was partly occasioned through the fault of the defendants, who ought not to have allowed that course to have been pursued."

Upon this part of the case, Mr. Justice Grant observes, "It is too late now to inquire upon what ground the court allowed these pleas, or to lament that it did not intimate to the plaintiff that he had mistaken his remedy. The plaintiff was advised to take the very unusual and calamitous step of taking issue in fact upon these pleas which had been allowed in law. Accordingly evidence was taken at an enormous expense and prodigious length, which occupied three years."

Mr. J. Seton expresses himself to the same purpose.

After all this enormous mass of useless litigation and expense, and after the lapse of 16 years, the bill was dismissed, it being clear that the complainant had a good claim in fact, and equally clear that he ought to have enforced it at law, and not in equity.

"It is not without reluctance," says Mr. J. Seton, "that the court has come to its final conclusion, as the effect of it is, that after a protracted litigation and expense, the plaintiff is remitted to his original rights (which are still undecided, and incapable of being decided, from the mode which has been adopted by him of enforcing them), with all the disadvantage which may have been incurred by the delay which has taken place in ineffectually prosecuting them."

We have said above that we notice this case only for the purpose of illustrating the mischievous way in which law and equity are separated in English procedure; we have now, therefore, to remark, in explanation, that we have not fallen into the error of attributing to this separation the delay, vexation, and expense of this suit. The mischievous effect which we attribute in this case to the separation of law and equity is, that after all this delay, vexation, and expense, the parties are not advanced a single step towards the decision of the question between them. The court was, at the conclusion of the case, in possession of all the material facts; through the pleadings, and the evidence taken in the examiner's office, and the admissions of counsel, it was in possession of all that was necessary to decide the case at law, if the rules of English procedure had permitted it to do so.

But the rules of English procedure do not permit this rational course; and instead of it, a spectacle is exhibited which must surely be shocking to every lover of justice. All the professional acumen of the judges, stimulated by the sense of justice and the feeling of commiseration, is exerted, and exerted in vain, to find a ground on which the plaintiff's case may be rested in equity. They are forced, by the constitution of their court, to tell him that he has mistaken the nature of his case; that his remedy, if not barred by lapse of time, is at law; that is to say, that if he is not precluded by lapse of time, he must go to the other side of the court, where, finding the judges ignorant of all that he and they have been doing on this side, he must state and prove his whole case over again, in a different form. This, if his remedy at law is not barred by lapse of time. If his remedy at law is barred, he is to be put, indeed, to no more trouble and expense; but he is to be punished with the denial of his admitted rights, not for any misconduct he may have been guilty of in the course of the suit, but because, in a court of law, he must be held to have slept over his rights; he must be considered as having neglected to institute proceedings during the last 16 years, though, during all that time, he has been proceeding in the same Supreme Court, before the same judges, but unhappily sitting on a different side of it. Such is the scheme of procedure according to which the principles of English law and English equity are applied to the transactions of life; and no one can be surprised that persons, not having sufficient acquaintance with the subject to distinguish accurately between the procedure and the substantive rules, should look upon the whole system with the distaste and alarm which ought to be excited only by one portion of it.

If such a case as this had occurred in a mofussil court, being, as each of them is, not a court with two sides, one deciding according to law and the other according to equity, but a court deciding according to law as modified and corrected by equity, this frightful waste of time and money could not have taken place.

The court having been once fairly put in possession of the facts by the pleadings and evidence, would have proceeded to decree to the plaintiff his legal rights, if there were nothing inequitable in them; if there were, then his legal rights modified and corrected by equity. This is what, as we have seen, the court of Sudder

Dewanny

Dewanny Adawlut actually did in the case we last cited from the reports of that court.

There is nothing, then, in the English substantive law which prevents it from being easily adapted to the condition of all persons in India, not Hindoos or Mahomedans.

We know that it will be considered a great boon by the large and increasing class whose petition has given rise to this Report.

We learn as much respecting the Armenians from their petition, which we have already noticed; for, after setting forth the destitution of their legal condition, they add, "As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be discovered, your petitioners humbly submit that the law of England is the only one that can, upon any sound principles, be permitted to prevail, and that it is moreover the law which was promised to Armenians at the time of their settlement in the country."

At the end of their petition they give a copy of an agreement between the East India Company and Cogee Phanoos Calender, an eminent Armenian merchant. This agreement is dated 22d of June 1688, and contains what they here construe as a promise of English law. It is of course unnecessary that we should discuss either the validity or the meaning of the agreement, as it is the wishes only, and not the rights of the Armenian people with which we are here concerned.

We have no reason to think that English law, thus adapted to the condition of British India, will be considered objectionable by the Portuguese.*

We believe that in introducing it as the *lex loci* of this country, the Legislature will be doing no more than giving an express sanction to that which ought to have taken place tacitly, according to the analogy of the general principles of international jurisprudence.

Lastly, we are satisfied that it is very much for the interest of the subjects of this Indian empire, that during the considerable interval which must elapse before codes of substantive law can be prepared, the law of the mofussil should be assimilated to the law of the presidencies; that is to say (speaking, however, in terms which, to be rigorously accurate, require some qualification), should be the Hindoo law for Hindoos, the Mahomedan law for Mahomedans, and the English law for everybody else.

The future proceedings of our Commission in regard to substantive law will then be confined to the preparation of three codes founded upon these three laws, and to the framing of provisions, as far as that can be done beforehand, for the cases in which they may come into collision.

What defects there may be in the procedure of the Company's courts, and what may be the proper remedies for them, are considerations which we must reserve for the general code of judicial establishments and procedure, or for other special reports. But the measure we are now recommending renders highly expedient, if not absolutely necessary, the anticipation of one of the provisions of that code. We mean the creation of a high court of appeal at each presidency, or rather of a college of justice, containing many courts of appeal; which college of justice is to be composed of the judges of the Supreme Court, and of the judges of the Sudder Dewanny Adawlut. We need not now discuss the question whether there should be one, or more than one judge, in each court of appeal. The college of justice will at any rate be divided into several courts, and, in the distribution of causes to the several courts, attention will of course be paid to the special qualifications of the different judges; and in all appeals from decrees made under the law which we are recommending, the appellate court will be held by a judge of the Supreme Court, with or without associates. It is a very fatal mistake, according to our view of the matter, to suppose because judges having a profound knowledge

* With regard to the Parsees, there may be some doubt; that large portion of this race which is to be found in Goojrat and on the coast north of Bombay might possibly feel some discontent at being included in the proposed Act. They are purely Asiatic people, and whatever they have of positive law, to which they are entitled under the Bombay Code, consists of such of their national customs as can still be ascertained, and of such as they have borrowed from the Hindoos. It will be seen that we propose to give them, as to all others who are interested, an opportunity of expressing their opinions upon the measure which we are recommending.

ledge of the rules of English substantive law, have hitherto been accessible to the suitors only through a procedure encumbered with such unreasonable and mischievous technicalities as those which defeated justice in the case of Goopee Mohun Deb. *v.* The East India Company, that therefore such a profound knowledge of substantive law is itself a thing not to be desired in the administration of justice. It is another great mistake, and practically almost as fatal a one, to suppose that these two things, a profound knowledge of substantive law, and a mischievously technical method of applying it to the affairs of men, are inseparably connected; they are in truth only accidentally, though they have hitherto been very constantly connected.

Reverting to the case of T. Hoo *v.* Peter Marquis, let us suppose that case, instead of being decided in appeal by the Sudder Dewanny Adawlut, upon the opinion of the Advocate-general, to be decided by a judge of the Supreme Court, sitting as a member of the college of justice, and we have an administration of English law combined with equity, to which, in many respects, the suitors of the mother country might look up with envy. There will still remain much to be corrected in the courts of original jurisdiction. There will remain, too, what is perhaps incapable of complete correction, the inexperience of the mofussil judges in English law. But, instead of hostile courts, some administering law, some equity, or a court divided against itself, administering sometimes law, sometimes equity, there will be a set of courts (in the highest of which the greatest legal learning in the country will be found), each court giving to the suitor itself, instead of telling him that he will find it elsewhere, that measure of justice to which he is entitled by law as combined with equity.

As it is our meaning that the appeals under the new law should be decided by judges of the Supreme Court, it may seem that it was unnecessary, upon this occasion, to speak of the institution of a college of justice consisting of those judges and the judges of the Sudder Dewanny Adawlut; but we do this for the purpose of showing that the measure we are now recommending is an essential part of the general scheme which we have in contemplation. Another measure corresponding to this will probably, in like accordance with the general scheme, be recommended in a report we are now preparing upon judicature and procedure, in the places subject to the jurisdiction of the Queen's courts. We shall probably there propose that the appeal from the new courts of original jurisdiction in the presidencies shall lie to the colleges of justice, and any cases in which the peculiar knowledge possessed by the judges of the Sudder Dewanny Adawlut may be useful, will of course be decided in appeal by them, or, at least, with their assistance.

The recommendations we have now the honour to submit, are:

1. That an Act be passed declaring and enacting that so much of the law of England as is applicable to the situation of the people, and as is not inconsistent with any Regulation of the Codes of Bengal, Madras, and Bombay, or with any Act passed by the Council of India, shall be taken to be the law of the land throughout British India, except the places subject to the jurisdiction of Her Majesty's courts; and that all persons shall be subject to that law, except Hindoos and Mahomedans. That the British statutes passed since the 13th year of King George the First shall not be considered as part of the law; but that the Acts of the Council of India, which introduce the provisions of British statutes into India, shall be considered as part of the law, subject of course to the same limitations and exceptions as the rest of the law.

2. The general limitation comprised in the words "so much as is applicable to the situation of the people," would of itself be sufficient to exclude all that would be inconvenient in English law, and therefore to exclude English tenures, and the system of conveyancing which is founded upon them. Upon this point it may be as well to quote the words of Sir W. Blackstone, when he is speaking of an inhabited country colonized by Englishmen, which it will be recollected is the case to which we have ventured to compare that of the English in India.

Illustrating the expression, "So much as is applicable to their own situation," he says, "What shall be admitted and what rejected, at what times and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature, subject to the revision and control of the King in Council." Now it would certainly be surprising if any court in this country were to hold that English tenures and conveyancing are applicable to the situation of the

the people. Nevertheless, in a matter of such vast importance, it will be the safest course to exclude English tenures and conveyancing by express words*.

3. Our second recommendation relates to a modification of English law which might be made by the courts in administering it. But there is one change which we think desirable, and which requires direct legislative sanction.

We recommend that the interest, whatever may be its extent, which any person, not being a Hindoo or Mahomedan, may have in real property situate without the limits of the local jurisdiction of Her Majesty's courts, shall go to the executor or administrator of such person, and be distributable, according to the Statute of Distributions, in like manner as personal property.

4. Our fourth recommendation is, that all questions of marriage, divorce, and adoption of persons not Christian, shall be decided according to the rules of the sect to which the parties belong.

5. Our fifth recommendation is, that a college of justice shall be erected at each presidency, consisting of the judges of the Supreme Court and of the judges of the Sudder Dewanny Adawlut, and that in all appeals from decisions in the mofussil under the new law, the appellate court shall consist of one judge of the Supreme Court, with or without associates.

It will be necessary that the appeals from decisions in the upper provinces in the Bengal presidency under the new law be heard at Calcutta.

Although we have endeavoured to show that, according to the analogy of the general principles of international jurisprudence, the English law became the *lex loci* of British India as soon as it became British; and although, if that doctrine is correct, the proposed law is in its nature declaratory, still we think it right that, under the very peculiar circumstances of the case, the proposed law should only operate upon the future, and that special provision should be made for the past. It is a very general and certainly a very useful maxim of jurisprudence, that every person must be taken to know the law of the country in which he resides. But we think that in this case that maxim ought to be relaxed, and that in all suits between persons not being Hindoos or Mahomedans, brought in respect of any transaction prior to the passing of the Act, the judge should be authorized to take into his consideration what law the parties to the transaction may have supposed themselves to be living under, and to decide according to equity, following that law.

If the government shall think fit to adopt the principles contained in these recommendations, we shall of course be ready to prepare an Act containing all the details which may appear to be necessary for carrying them into effect; but as the interests of many classes would be materally affected by such a law, we would, for the present, suggest only that this Report should be printed and circulated, in order that those classes may have an opportunity of considering the measure, together with the reasons on which it is rested, and of petitioning government for or against it.

Our president, Mr. Amos, though agreeing in the principal recommendations of the Commission, yet differing in his views upon some points, has thought it advisable to record his sentiments in a separate Minute, which is annexed to this Report.

We submit this our Report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
31 October 1840.

Minute by the Honourable *A. Amos*, Esq.

It appears to me that the practical questions connected with the subject of our Report are, first, whether the usage which has prevailed of administering for all persons the law or customs of the countries or sects to which they respectively belong,

* It has already been enacted by Act No. IV. of 1837, that all rules which prescribe the manner in which property in land may be acquired and held by natives shall extend to all subjects of Her Majesty.

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belong, should now be modified by legislative enactment? And, secondly, if it be expedient to modify, what kind of modification is it most expedient to introduce?

There appear to be the strongest reasons for an extensive modification of the existing usage. In many instances great perplexity and uncertainty has prevailed in ascertaining the description of law or customs by which a case is to be governed; in others, sometimes a separate, and sometimes a superadded difficulty has arisen in endeavouring to discover what the governing law or customs prescribe.

A great improvement in the administration of the justice of the country must necessarily take place, in proportion as we remove doubts with regard to the species of law to which a judge shall, in each case, refer, and as we make the ordinances of that law accessible and intelligible to him. According to the present usage, judicial inquiries have frequently to be made concerning the species of law which is to be administered to certain classes of East Indians and of Portuguese. And the species of law which is to be administered being ascertained, the judge is frequently obliged to investigate the obscure and doubtful customs of Armenians and of Indian Portuguese, and it is occasionally necessary to refer, for the decision of matters originating and terminating in India, to the systems of law prevalent in France, Holland, America, China, and every part of the world. Hence has arisen a variable and unsatisfactory state of law, and great uncertainty with regard to transactions connected with property belonging to large classes of individuals, many of whom are in the possession of great wealth.

An important objection may be made to any change in the rule of consulting the law or customs of the country or sect to which each individual belongs, in cases where particular classes may have cherished a reasonable confidence of being governed by a law or customs to which they are attached, which law or customs are reasonably definite, and with which, on grounds of justice or policy, it would be inexpedient to interfere. The validity of this objection will be universally recognised in the cases of Mahomedans, Hindoos, Jews, and, perhaps, of Parsees, though it is to be hoped that the laws of these different classes may, at a future period, be united, to a considerable extent, in one general system of law for all the inhabitants of India. But I apprehend it is obvious that the objection does not apply to East Indians, Armenians, Portuguese, or foreigners in general, whether European or Asiatic, preserving, however, the *lex domicilii*, in those cases in which it is preserved by the English law to foreigners in England. And where particular classes are themselves desirous of the change, I conceive that not only all objection is removed, but a strong additional reason for modifying the present usage of courts is presented.

Secondly. If the usage of the courts is to be modified, I think there can be little difference of opinion, that the most expedient course is to establish the English law, with such exceptions and qualifications as may be convenient for the government of British subjects, and of all those who are not, like the Mahomedans and Hindoos, to be governed by their own peculiar laws. And for the sake of uniformity, it may, perhaps, be expedient to modify the English law, even further than would be proper if British subjects were alone concerned.

With regard to the exceptions and qualifications with which the English law ought to be introduced, I am inclined to agree, in the first place, that questions of marriage, divorce, and adoption, should be excepted, though it is proper to observe that such exceptions are by no means usual according to the practice of nations.

The administration of law modified by equity, instead of separate courts of law and equity, held before the same or different judges, is an arrangement which necessity and convenience dictate in the mofussil. Such a practice must, I conceive, have been adopted in all cases falling under Act No. XI. of 1836. I think, however, it should be very distinctly stated, that the equity so to be administered means the defined principles of the English Chancery Courts, which may sometimes be opposed to the intentions of parties, and the supposed "equity and good conscience" in a particular case, for the sake of general rules.

It will be generally admitted that the common simple forms of conveying property, and expressing contracts of various kinds which are used in the mofussil, should be as effectual as they have always been. In cases of mortgage, sale, lease, or the like, it would be extremely inconvenient to subject East Indians, Portuguese, Armenians, and even British subjects in the mofussil, to the observance of the technicalities required in English legal instruments. But this departure from English law, may perhaps require some qualifications; for instance, it may, on consideration, be thought advisable to insist upon compliance with some of the English provisions,

provisions with regard to the necessity of certain contracts or undertakings being expressed in writing; and the formalities required by the English law of wills, simplified as they have recently been, may be thought not unsuitable to the circumstances of the mofussil, and, in the opinion of British subjects at least, may be deemed essential to the secure succession to property. Upon such points I do not anticipate any material difference of opinion among the members of the Commission.

I have some doubts with regard to the general supersession of the English laws of tenure and of conveyancing, or rather with regard to the latter, permitting the use of technical forms, but denying them any imperative technical operation, except as consonant to "equity and good conscience," in the meaning according to which those terms are understood in the mofussil.

It may be expedient to define, with greater particularity than may be thought necessary for the immediate object of the Report, what is embraced under the laws of tenure and conveyancing. The parties to be affected by the proposed enactments, and the judges in the mofussil who are afterwards to administer them, may not be expected to distinguish nicely between the rules of tenure and other rules limiting or prescribing the enjoyment of real property. For example, I conceive that it might not be obvious that the Commissioners, in what they have said in regard to superseding the law of tenure, are by no means expressing any opinion concerning the propriety of superseding the English laws restrictive of perpetuities, by which parties are precluded from accumulating enormous masses of wealth for remote successors, and debarring the free alienation of their property for centuries.

A considerable part of the law of tenure and conveyancing, and of other divisions of the law of England, affecting both real and personal property, must fall of itself, for want of means of application in India, without any express exception. This is the case with regard to a large portion of the common and statute English law, introduced bodily into Calcutta at the time of granting a charter to the Supreme Court.

It appears to me that there is so much of the English laws of tenure and conveyancing, especially if a large interpretation be given to these terms, which is essential to the complete and secure enjoyment of property by a highly civilized people, that I should not feel disposed to recommend the dispensing with them generally, though particular exceptions may be very proper, and the free use of the most simple kind of conveyances be indispensable. As it is not proposed on the present occasion to alter the English law for the presidency towns, I think the departure from the law of the presidencies, in regard to British subjects having property in the mofussil, must be inexpedient, where the necessity for it is not of a very cogent nature.

With regard to the succession to real property according to the statute of distributions, it is a question requiring much deliberation, both as to the probability of the law leading to a multiplied partition of property, and as to the consequences of such partition with reference to the circumstances of India. Moreover, it is to be considered that the proposed rule will have the effect of establishing a different law of succession for British subjects in the mofussil from that which obtains in the presidency towns and in England. Under all circumstances, I do not feel prepared to recommend this departure from the law of England on the present occasion, though the succession to real property in the mofussil is a subject upon which in Council I should be anxious to invite discussion.

As to the establishment of a court of justice composed of the judges of the Supreme and Sudder Courts, it may be expected that under the proposed law appeals will sometimes involve points which only an English lawyer would be competent to decide, and sometimes points upon which it would be desirable that both Her Majesty's and Sudder judges should unite in a decision; but, judging from the experience of what has occurred since the passing of Act No. XI. of 1836, it is probable that for some years the number of appeals of this nature will be small. A temporary expedient might be resorted to, by enabling the courts of the mofussil to state questions of English law distinct from matters of fact, for the opinion of a judge of the Supreme Court, before whom the parties might be at liberty to argue the points. Ultimately, I think, a court of the nature proposed in the Report will be found a useful if not a necessary measure. It may also deserve consideration whether such a court should not merge in an appellate court having jurisdiction over all the tribunals of India.

(B.) No. VII.
Petitions of East Indians and Armenians.

These being my views on the subject of the recommendations contained in the Report (which I hope will be found to differ but slightly from the views of my colleagues), I have further to add, with the greatest deference, that I do not attach much importance to the consideration of the questions, what ought to have been the *lex loci*, after the conquest of India by the British arms; or what, according to general law, it ought to be now, provided the usage which has prevailed were superseded and nothing were set up in its place. I am happy to find that such a very able and learned argument can be adduced to show that something very similar to what is expedient now ought always to have been the rule of law; but I do not feel prepared to give a confident assent to the conclusion at which the argument arrives. Neither, if I thought it material, do I believe that I could present any other view of the question of a *lex loci*, as applicable to the peculiar circumstances of India, which I should deem wholly satisfactory. I am glad to think that the intricacies of that question throw no practical difficulty in the way of the proposed arrangements.

(signed) *A. Amos.*

—(C.) No. I.—

(C.) No. I.
Papers on Slavery in India.

PAPERS CONNECTED WITH LAW COMMISSIONERS' REPORT ON SLAVERY IN INDIA.

(No. 29.)

Legis. Cons. 15 Feb. 1840–41. No. 1.

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department, Fort William.

Sir,

I AM directed by the Law Commissioners to transmit to you, to be laid before the Right honourable the Governor-general in Council, so much of their Report upon Slavery in India as is printed. The Law Commissioners understand this to be in accordance with the wishes of Government. The remainder of the Report will be transmitted as soon as the printing is completed.

I have, &c.

Indian Law Commission, 5 October 1840.

(signed) *J. C. C. Sutherland*, Secretary.

P. S.—The first Appendix of the Report on the evidence taken by the Commission also accompanies.

(No. 32½.)

Legis. Cons. 15 Feb. 1841. No. 2.

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Law Commissioners to transmit five printed copies of the General Report on Slavery in India, together with the like number of printed copies of the prior Report, dated 1st February 1839.

I have, &c.

Indian Law Commission, 8 February 1841.

(signed) *J. C. C. Sutherland*, Secretary.

(No. 33.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department.

Legis. Cons. 15 Feb. 1841. No. 3.

Sir,

On the 8th instant, by desire of the Indian Law Commission, I had the honour to forward to you five printed copies of their General Report on Slavery in India, together with the like number of printed copies of their prior Report, dated 1st February 1839.

2. By the Commissioners' desire, I now forward with this five complete copies of the printed Appendices, to be kept with the General Report to which they belong.

3. The rest of the impression of the above official papers, except the copies reserved for the use of the Commission, will be sent to you when properly arranged and stitched.

I have, &c.

Indian Law Commission, 12 February 1841.

(signed) *J. C. C. Sutherland*, Secretary.

(No. 203.)

Extract from the PROCEEDINGS of the Right honourable the Governor-general of India in Council, in the Political Department, under date the 18th January 1841,

Legis. Cons. 6 Sept. 1841. No. 1.

(No. 2800.)

To *T. H. Maddock*, Esq. Secretary to the Government of India.

Sir,

With reference to Mr. Chief Secretary Reid's letter, dated the 18th October last, regarding the measures adopted by this Government for the suppression of the slave trade, I am directed to transmit to you, for the information of the Right honourable the Governor-general of India in Council, copy of a communication from the agent for the governor at Surat, dated the 4th instant, reporting the number of slaves imported into the Portuguese settlements in India during the last three years.

Political Dep.

2. In forwarding this communication I am desired to observe, that, although the Honourable the Governor in Council is not of opinion that the information therein contained can be entirely relied upon, still it is satisfactory to observe, that the number of slaves supposed to have been recently imported into the Portuguese settlements in India is considerably diminished.

I have, &c.

Bombay Castle, 31 December 1840.

(signed) *J. P. Willoughby*, Secretary to Government.

(No. 101 of 1840.—Political Department.)

To *J. P. Willoughby*, Esq. Secretary to Government, Bombay.

Sir,

I have the honour to acknowledge the receipt of Mr. Chief Secretary Reid's letter (No. 2244), dated the 15th of October last, requesting me to forward a statement showing the number of slaves imported into Demaun and Dieu during the last three years, and the average progressive increase or decrease in number during each year.

2. In reply I beg to report, for the information of the Honourable the Governor in Council, that I have used my utmost endeavours to obtain the required information. Such as I have received, I fear, cannot be depended on for its accuracy;

(C). No. I.
Papers on Slavery in India.

accuracy; and even if we were to apply to the Portuguese authorities, I very much doubt whether they would afford an account that could be implicitly relied upon.

3. The following information I have collected from an individual well acquainted with the resources of Demaun and Dieu: that for the last two or three years there have been very few slaves imported into these places, which is to be attributed, in a great measure, to the vigilance of the British Government, though in former years the number of slaves imported into the three Portuguese settlements of Goa, Demaun, and Dieu averaged from 250 to 300 per annum.

4. There were some vessels last year, the property of one Moonajee Wullajee, which were bringing slaves from Mozambique to Demaun and other Portuguese ports, but which were intercepted by Her Majesty's ships.

5. During this year no ship has arrived at Demaun from Mozambique. It appears that the number of slaves imported in the years 1837, 1838, 1839, into Demaun, were as follow:

In 1837	- - - - - - -	from 10 to 15.
1838	- - - - - - -	from 8 to 10.
1839	- - - - - - -	from 5 to 7.

Into Goa and Dieu, during these years, from 15 to 20.

6. In reference to the 2d paragraph of the communication now under reply, I am not prepared to propose any measures beyond those already in operation for preventing the importation of slaves into the Portuguese territories.

I have, &c.
(signed) *G. L. Elliot*,
Agent for the Honourable the Governor.

Surat, Office of Agent for the Governor,
4 December 1840.

(True copy.)
(signed) *J. P. Willoughby*, Secretary to Government.

Ordered, that, in continuation of extract from this department, dated 9th November last (No. 1298), a copy of the foregoing despatch be sent to the Legislative Department for communication to the Law Commission.

(A true extract.)
(signed) *T. H. Maddock*,
Secretary to the Government of India.

(No. 215.)

Legis. Cons. 6 Sept. 1841. No. 2.

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *T. H. Maddock*, Esq. Secretary to the Government of India.

Sir,

Judicial Dep.
From the Officiating Secretary to the Government of India, dated 7 January 1839, No. 6.
To the Officiating Secretary to Government of India, dated 29 January 1839, No. 85.
From the Junior Secretary to the Government of India, dated 22 June 1840, No. 98.

With reference to the correspondence noted in the margin, I am directed by the Right honourable the Governor in Council to transmit, for submission to the Government of India, the accompanying copy of circular order (No. 132) of the Foujdary Udalut.

His Lordship in Council desires me to add, that the judges were requested, on the 2d instant, to explain, with reference to the order in question, how the opinion of their law officers, on the subject of slavery, affects the churmiah slaves of Malabar, and the other prædial slaves in Tanjore and other parts of the country, and that the reply, when received, will be immediately communicated for the information of the Government of India.

I have, &c.
(signed) *Henry Chamier*,
Chief Secretary.

Fort St. George,
15 March 1841.

Legis. Cons. 6 Sept. 1841. No. 3. Enclosure.

Question. The prisoner, who is a female dher slave of the prosecutor's, is charged with having, one month previous to the 18th November 1840, eloped from the prosecutor's, and not come again to work at his house.

The court direct their law officers to declare whether the prisoner has committed any offence under the Mahomedan law; and if so, how the offence is punishable?

Answer. The prisoner above referred to is not punishable under the Mahomedan law for her elopement, because the legislator has not propounded any punishment to the slaves of this country, in the same manner as he denounced Tazeer and Tadeeb to a true slave.

"With reference to your answer above recorded, the court desire that an explanation may be given of the difference drawn by you between a true slave and a dher slave."

Answer. She who may have been acquired by way of booty in a Mussulman war is called a "true slave," who can be sold and purchased. If such slave shall go away from the house of her master without his permission, she is liable to punishment in proportion to her guilt.

As regards the slaves of this country (whether they are of dher or paria caste, or of any other caste), the people receive them from their parents, either during famine or at other times; such slaves are not, under the Mahomedan law, fit to be sold and purchased. If they go away from the house of their masters without their permission, they are at liberty to live wherever they please, and they are not liable to any trial under the law in question.

(signed) *W. Douglas*, Register.

Extract from the Proceedings of the Foujdaree Udalut, under date the 10th February 1841.—(Circular Order, No. 132.)

By the annexed futwa of the law officers of the Foujdaree Udalut, it appears that the charge in No. 63 constitutes no crime under the Mussulman law; and as the futwa is of much importance on the subject of slavery, it is resolved to communicate it to all the judicial and magisterial officers, by means of the four provincial courts; and to communicate it to Government, for the information of the Government of India, now, it is understood, engaged in the consideration of the subject of slavery generally.

(True extract.)

(signed) *W. Douglas*, Register.

(No. 311.)

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *T. H. Maddock*, Esq. Secretary to the Government of India.

Legis. Cons. 6 Sept. 1841. No. 4.

Judicial Dep.

Sir,

With reference to para. 2 of my letter No. 215, dated the 15th ultimo, I am directed by the Right honourable the Governor in Council to transmit, for the information of the Government of India, the accompanying copies of letters received from the register of the Foujdaree Udalut, dated the 22d ultimo, and 13th instant, explaining how the opinion of the law officers of that court on the subject of slavery, circulated with their order, No. 132, affects the churmiah slaves of Malabar, and the other prædial slaves in Tanjore and other parts of the country.

I have, &c.

Fort St. George, 19 April 1841.

(signed) *H. Chamier*, Chief Secretary.

(C.) No. I.
Papers on Slavery in India.

(No. 43.)

Legis. Cons. 6 Sept. 1841. No. 5.

From *W. Douglas*, Esq. Register Sudder Foujdaree Udalut, to the Chief Secretary to Government of Fort St. George.

Sir,

I AM directed by the judges of the Foujdaree Udalut to acknowledge the receipt of the extract from the Minutes of Consultation in the Judicial Department, under date the 2d March 1841, No. 192, requiring them to explain how the opinion of their law officers on the subject of slavery, circulated with their order, No. 132, to the subordinate judicial authorities, affects the churmiah slaves of Malabar, and the other prædial slaves in Tanjore and other parts of the country.

2. In reply, I am desired to observe, that the opinion of the Mahomedan law officers above adverted to, applies to males as well as to females, and to the prædial slaves in Malabar, Tanjore, and elsewhere.

3. The first judge deeming further explanation requisite, has entered in a separate Minute his dissent from this letter.

Foujdaree Udalut, Register's Office, 22 March 1841. (signed) *W. Douglas*, Register.

(No. 58.)

From *W. Douglas*, Esq. Register of the Foujdaree Udalut, to the Chief Secretary to Government of Fort St. George.

Sir,

WITH reference to the extract from the Minutes of Consultation, under date the 5th instant, No. 266, I am directed by the judges of the Foujdaree Udalut to transmit to you, to be laid before Government, a copy of the Minute of the first puisne judge referred to in para. 3 of the letter from this court, dated the 22d March 1841.

Foujdaree Udalut, Register's Office, 13 April 1841. (signed) *W. Douglas*, Register.

MINUTE of the 1st Puisne Judge.

I THINK we should add that, in fact, our criminal or Mahomedan law, as well explained at page 30 of Sir W. Macnaghten's Introduction to its principles, maintains, that "they only are slaves who are captured in time of war (Jihaod, a religious war, is meant), or who are descendants of such captives."

See chap. 6 of Sir Thomas Strange's Elements of Hindoo Law.

For a breach of slavery such alone are punishable by the criminal code; at the same time, there can be no doubt that the civil code or Hindoo law, on the contrary, formally acknowledges prædial slavery, and also other forms of bondage; and though sanctioned by immemorial custom, the civil law stands contrasted in this respect with the criminal code, which lends it most slender and confined support.

(signed) *A. D. Campbell*, 1st Puisne Judge.

(True copy.)
(signed) *W. Douglas*, Register.

(True copy.)
(signed) *H. Chamier*, Chief Secretary.

Legis. Cons. 6 Sept. 1841. No. 6.
Slavery in India.

MINUTE by the Right Honourable the Governor General, dated 6 May 1841.

THIS subject, so fully treated in the present Report of the Law Commissioners, is undoubtedly a most difficult and extensive one; but the evidence and information which they have collected may, I trust, enable us to form some clear conclusion

conclusion, such as shall suffice to determine the immediate practical course of the Government.

I will not enter into much detail in pointing out the generally mild character of what is termed slavery in this country, or in marking how the agrestic servitude which exists in several* of its districts is connected chiefly with distinctions of caste, and will be upheld, notwithstanding any measures of the public authorities, by the force which national habit and opinion have imparted to those distinctions. The facts relating to the various descriptions and modifications of bondage, as prevailing in different provinces, are set forth by the Commissioners with distinctness and precision. On the effect of caste in maintaining agricultural servitude, even under circumstances in many respects favourable to freedom, instructive particulars will be found in the evidence respecting the districts of Coorg and Malabar. In Coorg many of the slaves emancipated by Government on its own estates have, from various causes, been led to destroy their certificates of freedom, and to place themselves again in servitude under their former masters. In Malabar all the influence of the English proprietor of an estate cannot obtain for any of his labourers a greater degree of respect or privilege than the strict local usages of caste allow to them. They remain, whatever the liberty of action which he accords to them, as degraded as before; for they cannot raise themselves above the low class to which they belong, and must mix only on the terms to which they have been accustomed, with their caste brethren, the chumar slaves of the province.

It is enough to say, that there is obviously little in common between the voluntary subservience to their employers of particular individuals or races in India, and the former oppressive and compulsory slavery of our West Indian settlements.

We must deeply pity and lament, whatever there may be of degradation, poverty, and helplessness amongst the lower classes of our Indian subjects, and their undue subjection, under any form or designation, to those of better birth, to the powerful and the wealthy. It behoves us to watch their condition with a vigilant eye, and to do what may be in the power of the Government for its amelioration; but we ought not, through a misuse of names, to form an erroneous idea of things, or seek violently to disturb relations to which in many cases all who share in them are attached, regarding them, as may so often be observed in respect both to those who render and to those who receive service, as a source of mutual advantage, or even of honour and distinction.

In effect, that which constitutes the essence of slavery may be said to have been already abolished nearly everywhere throughout India. I mean by that essence, an entire subjection, sanctioned and upheld by the law, of an individual and his family to the will of a master, and the absolute claim of property, with the right also and the means of enforcing that claim, of one man over another. It will be found, however, that almost, if not at this time quite universally, a compulsion by a master over his dependent is admitted by our criminal courts; that any force used by him towards his so-called slave is punished, just as it would be if used towards a free man, and that nearly as generally the magistrates do not interfere for the restoration of a runaway slave to his employer.

Under such an administration of the law, what but the tie of general good treatment and a supposed self-interest will prevent a slave from leaving his master and living in freedom?

I may cite a few statements, some from districts in which the name of slavery is yet most prevalent, as showing how important is this practice of the magistrates.

Captain Jenkins says of Assam, "I consider that the Government, by withholding a regulation making it legal to have recourse to the criminal courts for the apprehension and restitution of slaves, have virtually abolished slavery; the means of escape from their owners being so easy, and the difficulty and expense of recovery through the civil court being so great, that no slaves above the age of childhood need be detained in bondage, except with their own free will." Page 335 of Appendix.

The principal collector and magistrate of Tanjore to the like effect: "So long as a slave chooses to remain with his master, he does so, and leaves him for a better Pages 199 & 200 of Report.

* Malabar Tamul districts of Madras, Behar province.

better at pleasure. Nothing but a civil suit, which would cost more than ten years of his labour, can recover him, and being recovered, there is nothing to prevent his walking about his own business as soon as he has left the court which has pronounced him to be the property of another. The magistrates, it seems, decline to assist the master to recover a runaway slave, and leave him to his own resources, which the slave defies. Under these circumstances, mutual interest appears to be really the bond between them."

Page 222 of Rep. The magistrate of Malabar, of the practice of his court in 1836, says, "That the relation of master and slave has never been recognised as justifying acts which would otherwise be punishable, or as constituting a ground for mitigation of the punishment; and the criminal judge adds, that no distinction is recognised in the criminal courts between a free man and slave, which statement is repeated by the court of circuit."

Page 269. And of the usage in the Bombay presidency it is observed in the Report, "An examination of the returns in the Appendix will show how rare, indeed almost unheard of, is a suit in the civil courts against a slave or a third party for recovery of services, property or damage, by abduction or desertion; yet almost all the reporting functionaries agree that a slave owner has a good cause of action in the cases supposed, and possesses rights which cannot be questioned in the abstract, though so difficult of enforcement as not to be worth the attempt in these times."

The criminal law on the subject is, I apprehend, correctly stated in a futwa given 10th February 1841, by the Mahomedan law officers of the Madras Foujdaree Adawlut, in the case of a female dher slave, charged with having eloped from the prosecutor, her master, and not coming again to work at his house. It is to the effect that "the prisoner above referred to is not punishable under the Mahomedan law for her elopement, because the legislator has not propounded any punishment to the slaves of the country in the same manner as he denounced Tozier and Tadieb to a true slave. She who may have been acquired by way of booty in a Mussulman war, is called a true slave, who can be sold and purchased. If such slave shall go away from the house of her master without his permission, she is liable to punishment in proportion to her guilt."

"As regards the slaves of this country (whether they are of dher or paria caste, or of any other caste), the people receive them from their parents, either during famine or at other times; such slaves are not, under the Mahomedan law, fit to be sold and purchased. If they go away from the houses of their masters without their permission, they are at liberty to live wherever they please, and they are not liable to any trial under the law in question." Upon this futwa it is declared by the judges of the Foudjaree Adawlut, in a letter addressed by them to the Government, 22d March 1841, "that this opinion of the Mahomedan law officers applies to males as well as females, and to the prædial slaves in Malabar, Tanjore, and elsewhere." It is pointed out in a separate Minute by Mr. Campbell, one of the judges, that the Hindoo civil law is, in respect to slavery, remarkably contrasted to the Mahomedan or criminal law, and can derive no support from it.

The Mahomedan criminal law being that which, with specific limitations and exceptions, is administered by our courts, there is no reason why any benefit which it gives to persons in a condition of servitude, not of the strict kind that alone it recognises and sanctions, should be in any degree denied or abridged. This exemption from criminal or magisterial process, which alone is summary and effective, leads directly and certainly, as it appears to me, to the destruction of all that is legally coercive in the maintenance of the status of slavery; and we need, therefore, the less dwell on what might be the decrees of our civil courts on questions concerning that status being brought before them.

I believe, however, that for the reasons stated in the futwa above cited, no Mahomedan master could prove a legal title to the possession of a slave at this day, the only legal slaves, under the Mahomedan law, being captives taken in battle, or their heirs. This doctrine has been long ago asserted by the highest authority, and seems to have been affirmed by the Calcutta Sudder Court in the case reported in pages 249 to 251 of the Appendix to the Report before us, and as respects the Hindoo law, which admits of the acquisition of slaves in a number of ways, the cases reported in the following pages of the Appendix will show that whenever as yet cases have been litigated before the Sudder Court,

grounds

grounds have existed for rejecting the claim of servitude against the parties sued as slaves.

I would only at present observe on the point of civil jurisdiction, that my attention has been drawn to the statement of the judge of Sylhet, that should a person decreed by the civil court of that district to be a slave "refuse to serve or to comply with the award, he is imprisoned so long as the master desires to pay the subsistence money, in the same manner as other prisoners are confined in the civil gaol under a decree in a regular suit." And I have caused a reference to be made from the Government of Bengal to the Sudder Court, in order that it may be ascertained whether such is a proper and justifiable manner of executing a decree, of which the purport is only to declare that an individual belongs to the servile condition.

P. 136. of Appx.

It is true that the question of civil law is not to be regarded as a mere question of curiosity and legal nicety, and as of no serious practical importance. It is no doubt easy to escape out of the reach of a civil process, yet the possibility that such a process may issue is not without objection, and might occasionally lead to considerable vexation and inconvenience. But I cannot view this condition of the civil law as a pressing and general evil, and I apprehend that it certainly does not admit of any easy and immediate remedy. Such a remedy may form part of a more general measure of jurisprudence. Its principle is, I am informed, involved in intricate questions of law and time, and caution seem to me obviously required for its due investigation and discussion. I would ask, too, for more time for legislation upon the manner in which the state of bondsmen or articled labourers is to be regulated. It unhappily borders nearly upon slavery in some parts of the country, and yet the mode in which its evils are to be limited and corrected, would open to us a wide field of controversy. We may perhaps be satisfied for the present if these men, though subject to the pecuniary penalties of their bonds, are protected, as far as the law can protect them, from all personal infliction or violent coercion on the part of their master.

Even on the graver branch of this great subject, viz. the operation of our criminal and police laws, I have been greatly inclined to the opinion that legislation for the more clear announcement of the protective character of those laws is not necessary, and that the mere lapse of time is in the best possible manner, because surely and quietly, working the complete practical abolition of slavery; that many are not of this opinion, and it may in truth not be otherwise than just and useful that the principles in this respect of the English magistrate, and of the Mahomedan futwa, should have strength and publicity given to them by an express enactment of the British Indian legislature.

I am prepared upon these grounds, and on the evidence and opinions we have now before us, to pass a law declaring that any act which would be an offence if done to a free man, shall be equally an offence if done to a slave, or, as I would rather say, to any one in any condition of dependence on a master, and I would add to such an act that (to the effect of the proposal of two of the Law Commissioners) "no rights claimed as arising out of an alleged state of slavery shall be enforced by a magistrate." Such an enactment would be entirely in consonance with the doctrince of the Mahomedan lawyers which I have above quoted, as applied to the actual state of those classed as slaves in India. I may briefly say, on the contrary opinion of others of the Commissioners as respects the concession of an authority of moderate correction, that I am satisfied, that with our very imperfect police and remotely scattered magistrates, it would not be safe to commit any power of punishment to masters, and that, in fact, we can have no security against their occasional bad character or excited passions other than that of withholding from them all power of personal coercion whatever. Compensation for such a formal withdrawal of authority seems to me out of the question, both because compensation could not be given on a ground so little capable of exact estimation, and because the authority, wherever it is exercised, rests upon no valid ground, and has actually ceased to exist in by far the greater number of our districts. I would not (independently of any reference to the Mahomedan law) allow our magistrates to enforce any rights arising out of slavery, because the state of slavery is one not to be presumed against any person summarily, and would require, were it to be brought for inquiry before a court, the most grave and discriminating consideration.

To the extent here proposed we might, I think, at once pass a law without

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Papers on Slavery in India.

reference to England, for the Honourable Court have more than two years ago urged it on us to take that step. But so much more legislation has been proposed in the reports of the Commissioners, that it may be best to refer all the papers for further directions from the home authorities.

I confess that it is my decided impression that the adoption of all the minute and detailed provisions recommended by the Law Commissioners, would much rather impede than advance the object we all have in view. That object is the earliest possible extinction, first practically, and in the end even avowedly, of slavery, in so far as such results can be attained by acts of the Government. But if, as is the intention of one of the recommendations, we connect the public officers with the registry of the sales of persons as slaves, how shall we be able at any future time to treat those transactions as otherwise than perfectly valid, or to deal with claims of consideration and compensation which may be preferred by purchasers? It is undoubtedly most desirable to put an immediate and entire stop to such practices, wherever they may yet partially prevail, as those of the sale of slaves without their own consent, of their sale under any circumstances separately from their families, or of the sale of agrestic slaves separately from the land to which they are attached. But in prohibiting every kind of coercion by the master over the person, and all summary interference of authority for the return of a person claimed as a slave to his assuming owner, we shall in truth do away with all such practices, for no one will be found to purchase that, of the continued possession of which he can have no assurance.

I would for the present be content with legislation to the effect which I have above stated. Compulsory contracts or transfers with the view to prostitution, would, I apprehend, be void, and punishable under the existing law. We shall have a better guarantee for good treatment and easy emancipation at the will of the slave, in the protection from any personal restraint which the law to which I have assented will confer upon him, than in express rules of the kind proposed by the Commissioners. In a word, I would legislate as little as possible now, and that only so as directly to advance the great end of practical freedom, while I would look forward with anxiety to a period when the Government may be enabled to fulfil the design of the British Legislature, by a declaration of the entire extinction of slavery as a state in any manner recognised by our laws.

I would, however, be disposed by a separate law (guarding the national custom of adoption) wholly to prohibit the sales of children, excepting possibly (after the example of the Bombay Regulation of 1827) in seasons of distress, such as follow upon inundation or famine, and under checks which might be then imposed by the Executive Government. Frightful abuses grow out of such sales, and if a stern necessity should seem for any time to require their sufferance, it would, I think, be very necessary to place them under the supervision of the public authorities.

I consider the recommendations of the Commissioners for the better enforcement of the objects of the stat. 5 G. 4, c. 113, as very proper and necessary.

It might perhaps be well, as a part of our measures for the amelioration of the condition of servitude in India, to obtain periodical reports of the state of slaves or bondsmen, and of legal transactions affecting them, in the districts in which such classes are most numerous, and I would particularly ask the Government of Madras to consider whether by any addition to the magisterial force, or to the general strength of the police in Malabar, a proper degree of protection, which may now possibly be in some quarters wanting, would be given to the servile labourers and the scattered agricultural bondsmen of that province.

(signed) *Auckland.*

(No. 350.)

Legis. Cons. 6 Sept. 1841. No. 7.

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *T. H. Maddock*, Esq. Secretary to the Government of India.

Sir,

Judicial Dep.

Para. 1. With reference to my letters, dated the 15th of March and 19th of April last, I am directed by the Right Hon. the Governor in Council to request that

that you will submit, for the information of the Government of India, the accompanying copy of correspondence* with the judges of Foujdaree Udalut, relative to the case of a female slave who was sent up to the criminal court at Honore by the magistracy of Canara, charged with absenting herself and refusing to work, and who was released by the principal sudder ameen, as "the Mahomedan law officers both of the zillah court and of the Court of Foujdaree Udalut had declared that the charge constituted no crime under the Mussulman law."

2. It will be further observed from the last communication of the judges of the Foudjaree Udalut, that a female slave who was committed to the court at Sircy in 1836, and sentenced by the principal sudder ameen to six weeks' imprisonment, was subsequently released by order of that court under the opinion expressed by their law officers, which will be found contained in the extract from their proceedings, dated the 8th of November 1836, annexed to that communication.

I have &c.

Fort St. George,
10 May 1841.

(signed) *H. Chamier*,
Chief Secretary.

(No. 38.—Foujdaree Udalut.)

From *W. Douglas*, Esq. Register of the Foujdaree Udalut, to the Chief Secretary to Government.

Legis. Cons. 6 Sept. 1841. No. 8.

Sir,

I AM directed by the judges of the Foujdaree Udalut, with reference to their circular order of the 10th February 1841, No. 132, to submit, to be laid before the Government, the annexed copy of a correspondence received from the provincial court in the western division, relative to the case of a slave sent up to the criminal court by the magistracy of Canara, charged with absenting herself and refusing to work, and to request that, with the sanction of Government, the same may be transmitted to the Government of India.

I have &c.

Foujdaree Udalut Register's Office,
13 March 1841.

(signed) *W. Doulgas*,
Register.

(No. 30.)

From *Narasinga Row*, Principal Sudder Ameen, Zillah of Canara Honore, to the Register to the Provincial Court of Circuit, Western Division.

Sir,

1. AGREEABLY to the provisions of the circular order of the Court of Foujdaree Udalut, dated the 28th January 1828, I have the honour to request you will lay before the judges of the provincial court the following reference regarding a case which the Mahomedan law officer has declared not to be punishable under the Mahomedan law, but which appears to me to be injurious to the community.

2. The Honore tuhsildar, under instructions received from the joint magistrate, has sent up a prisoner by name Eeroo, a female dher slave, on a charge of having eloped from the house of her master, the prosecutor, Tulgod Vencunna Hegaday of Honore Talook, and subsequently refused to go back to his house.

3. The prosecutor states that he purchased the prisoner with her female infant, since dead, from her master, the first witness, for hoons four, under a deed of sale, about seven months ago; that she accordingly remained and worked at his house in Tulgod village for three or four months, and then eloped to the house of one Vencatputly Naik in Huldepoor village, and that she refuses to come back to the prosecutor's house when required to do so.

4. The

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* From the Register of Foujdaree Udalut, dated 13 March 1841.
Orders of Government thereon, 5 April 1841.
From the Register of the Foujdaree Udalut, dated 28 April 1841.

4. The prisoner states that she does not wish to remain at the prosecutor's house, but would only live with her husband.

5. The first witness deposes that the prisoner was his slave; that he had married her to one Eera, the dher slave of Bhrirma Shetly, resident of Jullnoully village, but that she used to put up in the witness's village and work at his house; that when she had no work at his house, she used to go and remain for some days in her husband's house in Jullnoully village, a distance of one coss; that about six months ago the witness sold her to the prosecutor for hoons four, under a deed of sale; that she accordingly remained at the prosecutor's house for three or four months in Tulgod village, one or one and a half coss distant from her husband's village; that she afterwards eloped to Vencatputly Naik's house at Huldepoor. The second and third witnesses prove the sale of the prisoner by the first witness to the prosecutor for hoons four.

6. Under these ciscumstances a question was put to the moofty of the zillah court, as to whether the prisoner's refusal to go back to the prosecutor's house, was punishable under the Mahomedan law or not, and if punishable, how; he has declared that it is not punishable.

7. As, however, I am doubtful to release the prisoner upon the said reply of the moofty, considering that it may be a dangerous precedent, I request the judges will favour me with instructions for my guidance in the case.

8. I beg to forward herewith the question put to, and the answer obtained from the moofty, with a translation, as also the record of the case, with translations of the criminal proceedings.

I have &c.

Zillah of Canara, Honore,
9 January 1841.

(signed) *Narasinga Row,*
Principal Sudder Ameen.

Order issued by Mr. *Maltby*, Joint Magistrate of Canara, to Shamshoodeen, the Tehsildar of Honore.

Read Urzee No. 638: You have made this reference after an inquiry into the petition presented by Venkunna Hegude of Tulgode, in Idoogoongey Magany, complaining of one Venkatputly Naik having retained a dher slave, named Eeroo, and her child, whom he had purchased from one Coopa Hegudy, of Kemnally, and praying that they may be sent for and delivered over to the petitioner. On reference to the record forwarded, it appears that the female, Eeroo, admits that she was the slave of one Coompunna Hegude, and that having been sold to Vencunna Hegude for four hoons, she came and worked at his house for some days, and adds that she is unwilling to go to Venkunna Heguday's house, but wishes to remain at Venkatputly Naik's; that she will pay to the said Hegudy the four hoons purchase-money, and live where she likes. There is proof on the record that the slave belongs to Venkunna Hegudey, and he is not willing to receive the purchase-money and let the slave go, and therefore no order can be passed in this office. You are therefore to order the said Eeroo to go to the petitioner's house, and live and work there as usual, and send her off. If she refuses to go, you are to forward her to the court for her offence, with a commitment, and make a report (to me) forwarding copies of the several documents. The papers received with your petition are herewith returned.

It appears in this case that Venkatputly Naik retained the said Eeroo by persuasion. He is a public servant, and is consequently acquainted with the rules, and therefore has not acted properly in gaining her over. You are therefore to warn him against such conduct in future: Malgee Cusba.

(signed) *E. Maltby,*
Joint Magistrate.

12 December 1840.

Question by the Honore Principal Sudder Ameen's Court to the Moofty of the Zillah Court.

The master of a dher female married to a dher belonging to another master, but she worked at her master's house, and also used to go to her husband's house, or

or she lived in her husband's house alone. Now the master of the female sold her to another ryot, residing at a further distance than the village in which her husband resides. The female declines to leave her husband, and says that she will not live with her purchaser. She also says that she will even pay the amount of her value and live with her husband. If a dher female sold by her master should refuse to live with her purchaser, having her husband, is she punishable under the Mahomedan law; if punishable, how?

(signed) *Narasinga Row*,
24 December 1840. Principal Sudder Ameen.

Reply of the Mooftee.

The dher female who says that she will live with her husband and not go to her present purchaser is not punishable under our law.

(signed) *Abdool Cussim*,
29 December 1840. Mooftee.

(True translations.)

(signed) *Narasinga Row*,
Principal Sudder Ameen.

From *W. B. Anderson*, Esq. Second Judge for Register, Provincial Court, Western Division, to the Magistrate of Canara.

Sir,

I am directed by the second judge presiding to transmit to you the annexed copies of a reference, dated the 9th instant, from the principal sudder ameen of Honore, and of the joint magistrate's order under which the case, the subject of it, was sent up to the court by the Honore tahsildar, and to request you will have the goodness to ascertain and report, for the information of the provincial court of circuit, and eventually of the Foujdaree Udalut, whether the said order was issued by the joint magistrate, because he considered any punishment he could inflict on the prisoner would be inadequate to the offence of which she is accused; and also whether any instance can be cited of such an offence having been punished by any of the criminal courts in Canara.

(signed) *W. B. Anderson*,
Provincial Court, Western Division, Second Judge for Register.
18 January 1841.

From *H. M. Blair*, Esq. Magistrate, Uddafry, to the Register to the Provincial Court of Circuit, Western Division, Tillicherry.

Sir,

In reply to your letter of the 18th ultimo, I have the honour to forward copy of a letter, with its enclosures, from the joint magistrate, dated 3d instant, stating that in ordering the committal of the case referred to, he was guided by the circular order of the Foujdaree Udalut, under date the 28th January 1828, which rendered the offence punishable by the criminal court, according to the opinion of the law officer. No. 39. October 1836.

2. In addition to the above explanation, I beg to forward an extract of the disposal of a similar case by the criminal court at Mangalore, in which the claim of the prosecutor was considered to be of a civil nature. No. 40. April 1839.

3. The existing system of slavery in Canara having been recognised by Government, it would seem absolutely necessary that the right of the master to the services of his slave should be protected by law, and as a difference of opinion seems to exist among the Mahomedan law officers as to whether a slave having deserted from his master, and refusing to return to him, is liable to punishment by the criminal court,

Note by the Provincial Court of Circuit:

The magistrate does not appear to have been furnished with an extract from the Foujdary Udalut's proceedings, under date the 8th Nov. 1836.

court, it is desirable that a definite rule should be established on the point; any uncertainty existing on this question must seriously affect the landed interests of this province, and produce a corresponding influence on the Government revenue.

(signed) *H. M. Blair*,
Magistrate.

Magistrate's Cutcherry on Circuit,
Uddafry, 11 February 1841.

From *E. Maltby*, Esq. Joint Magistrate, Sircy, to the Magistrate of Canara.

Sir,

I HAVE the honour to acknowledge your letter of the 28th ultimo, with its enclosures, and to state that I directed the case in question to be forwarded to the court, because I felt that I had no power to award any punishment whatever, as the Foujdaree Udalut decided on a former occasion, when the magistrate of Canara punished a refractory slave, that such cases are not within the cognizance of the magistracy, and should be forwarded to the criminal courts.

As the continued legality of slavery has rendered it necessary to attend to the complaint of masters of slaves, the magistracy have therefore been in the habit of acting upon the above order when the master's right was clearly established, and the slaves would not listen to admonition. It is in my recollection that some cases were forwarded to the court at Mangalore, but I do not recollect the sentences passed, and have not the records to refer to. In North Canara, where slavery is comparatively scarce, the records show that a female slave was committed to the court at Sircy in 1836, for refusing to remain with and work for her master, and was punished by the principal sudder ameen with six weeks' imprisonment, after a reference had been made to the Mahomedan law officer of the zillah court. I enclose, for your information, translated copy of the sentence received from the principal sudder ameen's court on this occasion.

(signed) *E. Maltby*,
Joint Magistrate.

Sircy, Canara, 3 February 1841.

(True copy.)

(signed) *H. M. Blair*, Magistrate.

EXTRACT from a STATEMENT of the CRIMINAL CASES tried by the Principal Sudder Ameen's Court at *Sircee*, for October 1836.

Criminal File Number.	By whom Committed.	Date of Commitment.	Name of Prisoner.	CHARGE.	SENTENCE.
39	Sondory Tahsildar.	22 June 1836	Nagee (female)	- - After having been purchased by the prosecutor, and worked with him for some days, refusing to attend and work.	- - The prisoner denied that she had been purchased by the plaintiff, and that she had worked for him. It is proved by the evidence that the mother sold the prisoner to the prosecutor, giving a deed of sale, and that the prisoner worked for the prosecutor accordingly. The prisoner derived no benefit by the evidence which she brought forward. Therefore the charge was considered proved, and as the Regulations do not provide for the punishment of such an offence, a reference was made to the moofty of the zillah court, according to the circular order of the Foujdaree Udalut, dated 28th January 1840, and a reply was received that the offence was one punishable under the law. The prisoner was therefore sentenced, after consideration of the time she had been in custody, to six weeks' imprisonment and labour.

(signed) *Zecaboddeen*,
Principal Sudder Ameen.

(True translation.)

(signed) *E. Maltby*, Joint Magistrate.

(True copy.)

(signed) *H. M. Blair*, Magistrate.

EXTRACT from a STATEMENT of PRISONERS sent in by the Magistrate and Police Officers, whose Cases were disposed of in the Month of April 1839.

Number of Case, and by whom Disposed of.	By whom Committed.	Date of Committal.	Prisoner's Name or Names.	Crime charged against the Prisoner or Prisoners.	Mode in which the Prisoners were disposed of; and in Cases in which the Prisoners were discharged, the Grounds of their Discharge.
40 Assistant criminal judge.	- - Additional joint magistrate.	30 March 1839	1. Koleeshetly 2. Bola. 3. Cheekoo. 4. Toombee, *alias* Murgod. 5. Jeboo.	- - The first prisoner is charged with inducing the four last prisoners to desert their lawful master; the four last prisoners (being slaves) with deserting their master.	- - Pursuant to the circular order of the Foujdaree Udalut, dated 20 January 1828, the Mahomedan law officer was consulted as to whether the prisoners were punishable under the Mahomedan law, and if so, to what punishment they were entitled, who declared "that if a slave shall not obey the orders of his master, or desert him, and if any individual shall instigate the slave to do so, both the slave and the instigator are liable to tazer. But it is to be known that the individuals of the dher and other castes in this country sell their children from want of means of support. This sale is not right Unfee religion; and by that sale they do not become slaves according to law, and are not liable to punishment for their disobedience, nor are their instigators liable to any punishment. On an examination of the case the assistant criminal judge is of opinion that the matter is not cognizable by a criminal court, inasmuch as it involves the proprietary right to the slaves. The prosecutor is accordingly directed to seek redress by a civil action.

(True extract.)

(signed) *G. Bird*, Criminal Judge.

(True copies and translations.)
(signed) *George Bird*, Acting Third Judge for Register.

(True copy.)

(signed) *H. M. Blair*, Magistrate.

(True copy.)

(signed) *W. Douglas*, Register.

His Lordship in Council desires to be informed what decision has been come to in respect to the female slave more immediately connected with the subject of the correspondence accompanying the above letter.

His Lordship in Council also desires to be informed whether any and what subsequent proceedings have been held in the case of the female slave committed to the court at Sircy in 1836, and sentenced by it to six weeks' imprisonment. It is believed that the Foujdaree Udalut have set aside this sentence.

Fort St. George, 5 April 1841.

(No. 66.)

From *W. Douglas*, Esq. Register to the Foujdaree Udalut, to the Chief Secretary to Government.

Sir,

Para. 1. WITH reference to the extract from the Minutes of Consultation, under date the 6th instant, No. 275, I am directed by the Court of Foujdaree Udalut to state, for the information of the Right honourable the Governor in Council, that the female slave, the subject of the correspondence which accompanied my letter of the 13th of March last, was released by the principal sudder ameen of Honore, as "the Mahomedan law officers, both of the zillah court and of the Court of Foujdaree Udalut, have declared that the charge constituted no crime under the Mussulman law."

2. The female slave committed to the court at Sircy, in 1836, and sentenced by the principal sudder ameen to six weeks' imprisonment, was subsequently released by order of the Court of Foujdaree Udalut, under the circumstances explained in their proceedings of the 8th of November 1836, an extract from which is submitted for the information of the Right honourable the Governor in Council.

(signed) *W. Douglas*, Register.

Foujdaree Udalut Register's Office,
28 April 1841.

(C.) No. I.
Papers on Slavery in India.

EXTRACT from the PROCEEDINGS of the Foujdaree Udalut, under date the 8th November 1836.

READ the Sirsee Criminal Reports, prescribed by Section 35, Regulation X. of 1816, for the month of September.

Suppl. Report, case 39.

1. In this case the Court of Foujdaree Udalut have thought it proper to require the opinion of their law officers on the following question involved in it: "*A.* sold her daughter *B.* to *C.*, but *B.* refused to work for *C.*; under these circumstances, is *B.* liable to punishment under the Mahomedan law?" and the following is the reply: "According to the doctrine of Hanéefa, if the people of this country should in seasons of scarcity sell their children, such sale is not valid; and as the sale is not valid, the child sold cannot be a slave; and hence a child so situated cannot be visited with stripes or imprisonment, or other correctional measures, which in case of fault the master is empowered to inflict upon his slaves."

2. The Court accordingly direct that if the prisoner Nagee be in gaol on the receipt of these proceedings, she be at once discharged; and likewise that to the mooftee of the zillah court (who gave an erroneous opinion on the point,) the accompanying copy of the above "question" and "answer" be furnished by the provincial court for his information, with copy of the case 39, as it stands in the original Criminal Report, and of the extract from these proceedings referring thereto.

(True extract.)

(signed) *W. Douglas*, Register.

(True copies.)

(signed) *H. Chamier*, Chief Secretary.

(No. 418.)

Legis. Cons. 6 Sept. 1841. No. 9.

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *T. H. Maddock*, Esq. Secretary to the Government of India.

Sir,

Judicial Dep. From the Officiating Secretary to the Government of India, dated 27 May 1839. To ditto, 30 July 1839.

Para. 1. WITH reference to the correspondence noted in the margin, I am directed by the Right honourable the Governor in Council to request you will submit, for the consideration of the Government of India, the accompanying extract from the proceedings of the Sudder Udalut, No. 53, dated the 17th ultimo, transmitting copy of a letter from the acting judge of Malabar, on the subject of slavery as existing in that province.

2. It will be observed, that in reference to the question submitted by the officiating judge of Malabar, "Whether chermars and other slaves should be sold in satisfaction of decrees?" the Court of Sudder Udalut are of opinion that, until the Government of India are prepared to legislate on this subject, the local courts must continue to enforce claims to property in slaves; and the judges further observe, in reference to the suggestion contained in para. 5. of the communication from the zillah judge, that if a law of the nature adverted to in para. 8. of Mr. Officiating Secretary Grant's letter, dated the 27th of May 1839, could not in justice be passed without compensation to the owners of slaves, so a law of the nature suggested by the zillah judge could not be passed by the Legislature without an equivalent to the much greater practical change which such a law would effect in the value of a slave. Respecting, however, the expediency of the proposed law, the Court of Sudder Udalut entertain not the least doubt, and they have accordingly suggested a reference to the Government of India on the subject.

His Lordship in Council desires me to add (on the authority of Mr. Conolly, the collector of Malabar,) that there is reason to believe that the amount of compensation which it might be necessary to make to the owners of slaves on the enactment of the proposed law, would not be so large as might be expected at first sight.

I have, &c.

Fort St. George, 3 June 1841.

(signed) *H. Chamier*, Chief Secretary.

(No. 53.)

EXTRACT from the PROCEEDINGS of the Sudder Udalut, under date 17 May 1841.

READ letter, dated the 5th ultimo, from the acting judge in the zillah of Malabar, submitting copy of a communication addressed to him by the Pynaad district moonsiff, representing, "that in execution of a decree in appeal suit, No. 28, of 1832, passed in favour of the respondent, the said respondent has put in a petition, praying that the 'chormars' (slaves) already under attachment, may be sold to meet the balance due, after deducting the amount realized; but as he is doubtful whether 'chormars' and other slaves should be sold in satisfaction of decrees, he requests to be informed whether such a sale is objectionable or not."

Legis. Cons. 6 Sept. 1841. No. 10.

1. The acting judge requests to be informed what reply he should send to the question of the moonsiff, and, "Whether it is fit or necessary longer to continue the public legal recognition in our courts of slavery, by entertaining and adjudicating suits, and executing decrees involving their purchase and sale, and whether some gradual and incipient steps may not safely be taken, and whether some further attempt ought not to be made towards the abolishment of slavery in Malabar; at all events, that it need not be fostered or recognised as it now is, like any other legal and valid transaction in our courts."

2. Every information which it was in the power of the Court of Sudder Udalut to collect, connected with the system of slavery as prevailing in the provinces subject to this presidency, (but especially as regards the province of Malabar,) has been already laid before the Indian Law Commission, with a letter from this court, dated the 10th of September 1836.

See also letter to the Chief Secretary to Government, dated 17 July 1839.

3. With respect to the question,* whether the courts would admit and enforce any claim to property, possession, or service of a slave, and if so, on what specific law or principle the courts would ground their proceedings, (which was one of the points on which information was sought by the Indian Law Commission, in their letter to this court, dated the 10th October 1835,) the Court of Sudder Udalut, in their letter quoted above, referred to the following opinion on this point, expressed by Mr. Strange, the then assistant judge of Malabar. "In the civil courts, the law recognised in Malabar is that of the country, called 'kana' (mortgage), 'jemna' (proprietary right), 'charrada' (custom or rules), before adverted to, which, although founded upon the Hindoo law, is appealed to both by Hindoos and Mahomedans, and regulates all questions of property, whether real, personal, or in slaves. It is not possible that the cases supposed, wherein the Mahomedan and Hindoo law may be brought into collision, should arise in Malabar. Hindoos in this district possess no other description of slaves but such as have been born from parents who are slaves by caste, and these the Mahomedan law would recognise to be in a state of slavery; and the three conditions under which persons become slaves among Mahomedans, that of descent, of captives in war, of unbelievers, and of voluntary sale in times of famine, are common to the Hindoo caste.

"The courts in Malabar, beyond a doubt, will be bound to admit or enforce claims to property in slaves (being such by the law of the country, and not imported from foreign parts,) on behalf of others than Mussulman or Hindoo claimants, and against others than Mussulman or Hindoo defendants, upon the grounds that such property has been acquired, not only with the tacit consent, but through the direct means and assistance of the British Government in India, in proof whereof he submits copies of official correspondence from the Bombay government and the Commissioners of Malabar, received from Mr. Francis Carnac Brown, of Tillicherry and Aujarakandy, who has succeeded to property in slaves purchased by his father from the government."

4. The

* Question proposed by the Indian Law Commission:—"Slavery not being sanctioned by any system of law which is recognised and administered by the British Government, except the Mahomedan and Hindoo laws, they are desirous of being informed whether the courts would admit and enforce any claim to property, possession, or service of a slave, except on behalf of a Mussulman or Hindoo claimant, and against any other than a Mussulman or Hindoo defendant, and if so, on what specific law or principle the courts would ground these proceedings."

4. The Court of Sudder Udalut are of opinion, "that until the Supreme Government are prepared to legislate on the subject of slavery, the local courts must continue to enforce claims to property in slaves, and this opinion will be communicated to the acting judge in the zillah of Malabar, for his information and guidance."

5. Mr. Thomas, however, suggests the enactment of a rule, to the effect that from and after one year from the date of its promulgation, the sale and purchase of a slave be not publicly and legally recognised in the Adawlut Courts of Malabar, and he suggests also that all children under 10 years of age, born of slave parents, be immediately emancipated, and that all children hereafter born be declared free.

6. It occurs, however, to the Court of Sudder Udalut to observe, that if a law of the nature referred to in para. 8 of the letter from the Government of India, which accompanied the Minutes of Consultation, under date the 2d July 1839, could not in justice be passed without compensation to the owners of slaves, so a law of the nature suggested by Mr. Thomas could not be passed by the legislature without an equivalent to the much greater practical change which such a law would effect in the value of a slave; and it is for the Government of India to determine whether the finances of the state will at present be able to meet any such expenditure.

7. Respecting, however, the expediency of the proposed law, the Court of Sudder Udalut entertain not the smallest doubt, and they would suggest, therefore, a reference to the Government of India on the subject.

Ordered, that extract from these proceedings, together with a copy of Mr. h omas's letter of the 5th of April last, be forwarded to the chief secretary to Government, for the purpose of being laid before the Right honourable the Governor in Council for his consideration.

(True extract.)

(signed) *W. Douglas*,
Register.

Zillah Malabar.

From *E. B. Thomas*, Esq. Acting Judge, Calicut, to the Register to the Court of Sudder and Foujdaree Udalut, Fort St. George.

Sir,

1. With reference to the enclosed communication from a moonsiff under this court, I have the honour to request the opinion of the Judges of the Sudder Udalut (under a reference to Government, if they deem necessary,) as to what reply I should send to the question of the moonsiff, and whether it is fit or necessary longer to continue the public legal recognition in our courts of slavery, by entertaining and adjudicating suits, and executing decrees involving their purchase and sale. It would appear worth considering whether some gradual and incipient steps may not safely be taken, and whether some further attempt ought not to be made towards the abolishment of slavery in Malabar; at all events, that it need not be fostered or recognised as it now is, like any other legal and valid transaction in our courts. The present reference from the moonsiff of Pynaad (an intelligent East Indian), is only one among numerous instances in which the sale and purchase of slaves (just like cattle, or other movables on an estate) comes before the courts for recognition and adjudication. I would propose no sudden or violent infraction of vested rights, or even long-tolerated abuses; but simply that the sale and purchase of slaves need not be publicly and legally recognised, as now, in our courts in Malabar. In some instances suits are instituted in which the slave is the sole object under litigation; in others he is mixed up with other property; and in public sales for the execution of decrees, slaves are constantly put up to public auction, under the orders of the courts. The practice of selling slaves for arrears of revenue, once common, was put a stop to 20 years ago, by orders from the Board of Revenue, I believe.

See also Court of Foujdaree Udalut, 132, 10 Feb. 1841.

One year's notice might be given to the people through the courts.

It would be practicable, where other property besides the slaves is involved in the litigation, to adjudge the rest. Omitting the slaves, the measure would in fact be simply a negative check, rather than any positive opposition to the practice of slavery, but would operate beneficially, though tacitly, in favour of the slave, inasmuch

inasmuch as the master would then feel that his hold on his slaves was not valid or legally recognised, but depended on his own mild and liberal treatment of them, when they felt at liberty to leave a harsh or cruel master, and some such doubtless there are. Though it may be plausibly, and perhaps with truth, urged, that the general features of the slavery of Malabar are of a mild nature, the effect is nevertheless debasing and degrading, as it ever is and must be under any shape or form whatever; this the wretched state of most of the slaves in Malabar attest; they are for the most part utterly degraded in intellect and in independence of mind, too often made apt and unresisting tools for bad purposes in the hands of their owners, and unfitted for good ones.

3. If it be necessary to show from facts, as well as from reason, that they are not indispensable to the agriculture or customs of Malabar, it may be mentioned that in some parts of North Malabar there are few if any slaves used; and again, that the subjection is not a voluntary one, is shown from the fact of many occasionally making their escape to Coorg and other parts of the country, where they become ordinary day labourers, but of course dare not return again to their own neighbourhood. It may also be mentioned that, if I am rightly informed, about 2,000 slaves, who became the property of Government from escheated and purchased estates, have been formally emancipated; these lands have not suffered; they are as fully cultivated as before, with few exceptions; the people have remained on the estates, now working as free men where they formerly laboured as slaves; there is indeed little fear of their leaving their homes, unless driven from them by ill-usage or other strong motive. I am unable to learn from any inquiry I have been able to make among intelligent natives of the province, any instance of a "cherman" being able to write or read his own name, an additional proof of their mental degradation.

4. It is also a lamentable, but undoubted truth, that their life is held at a low estimate by many of their masters, and the records of this court would show frequent instances where the slave is either made the ready instrument or the object of violence; on the one hand, he is thrust forward as the convenient scapegoat, given up to screen the higher and perhaps more guilty instigators of a murder; while, on the other, the opinion seems really to obtain, that far less guilt and odium attaches to the murder of a slave, and that his life is comparatively less to be valued than others. Criminal.

5. I would apologise for the length of these observations, but the subject, not entirely new to me, has been so frequently and powerfully forced upon my notice in both the civil and criminal business of this court, that I deemed it my duty to submit, for the consideration of the judges of the Sudder Udalut, and of Government, a measure which appears to me called for, and a preliminary and safe step amongst others towards a gradual and eventual emancipation of slavery in Malabar. Such final measures are of course for the consideration and wisdom of Government; I would however venture, with deference, to suggest that if any insurmountable obstacles should be found towards an immediate amelioration of the lot of the present race of slaves (cheemars and others), no rational or well-founded objection could appear to exist to a declaration by Government, "that slavery should no longer be perpetuated by birth, but that the children hereafter born from a certain date, and retrospectively within ten years from that date, should at least be free. This would include a large number of young, rising, free labourers, whose services would be ample and ready for every demand of agriculture, and to whose emancipation (as not yet from their age fit for work, or saleable) no just objection could be raised. That free is really cheaper than slave labour in its result, is a truth which (though demonstrable) would not perhaps be obvious to the slave-holders of Malabar; though, in fact, the allowance of paddy, a cloth, and a hut, usually given to the slave, will very nearly now hire a free labourer. The average ordinary cost and value of slaves in Malabar appears to be about 20 rupees for a male and 15 for a female; in some places the females are highest in price, on account of their children. As a proof of how frequently the subject is brought to the notice of this court, I subjoin a memorandum of miscellaneous petitions only lately presented among others; and should the judges of the Sudder Udalut desire it, I shall submit a statement showing the proportion of suits and transactions under the courts, involving the sale of slaves in the last year. Of course until other orders are received from the Sudder Udalut

It varies in different places.

(C.) No. I.
Papers on Slavery in India.

Udalut, or from Government, the procedure hitherto usual in all such cases will be maintained and recognised by me in this court.

(signed) *E. B. Thomas,*
Acting Judge.

Calicut, 5 April 1841.

(True copy.)

(signed) *W. Douglas,*
Register.

(True copies.)

(signed) *H. Chamier,*
Chief Secretary.

Legis. Cons. 6 Sept. 1841. No. 11. Slavery in India.

MINUTE by the Honourable *W. W. Bird*, Esq. dated the 18th June 1841.

IT would appear from the Report of the Law Commission, that slavery in almost every form, except the oppressive and compulsory kind practised in the West Indies, exists in India; but it is obvious that for the most part it is voluntary, connected in many places with distinctions of caste, and upheld by mutual convenience, or, which is nearly the same thing, by the wants arising out of the different relations of the parties concerned.

I cannot say that I approve of the plans recommended for adoption by either of the two parties into which the Law Commissioners are divided on the subject. The course recommended by the minority is to undermine slavery without abolishing it; to recognise the right of the master in his slave, and at the same time to deny him the power of enforcing it; to acknowledge the legal existence of slavery, and to refuse it judicial protection; to countenance for the present its continuance, in order to bring about imperceptibly its ultimate extinction, and thus gradually to render rights of little or no value, which otherwise might not be relinquished without contention. The majority, on the other hand, object to add new provisions to the law, which, while acknowledging the right of the master in the slave, leave him no means of enforcing the labour to which under that acknowledgment he is entitled. They concur, however, with their colleagues in opinion that it would be more beneficial for the slaves themselves, as well as a wiser and safer course, to direct immediate attention to the removal of the abuses of slavery, rather than recommend its sudden and abrupt abolition; and they agree not only in many of the propositions advanced for that purpose, but suggest additional ones of their own for the better treatment of slaves, and for enabling them to effect their emancipation.

The first of these two plans involves an inconsistency, which appears to me to preclude its adoption as a legislative measure. It grants a licence for dereliction of duty towards the master, without liberating the slave; it injures the one by encouraging idleness and immorality in the other, and is consequently hurtful to both. The second plan is free from this inconsistency, but it is equally open to the objection of being calculated to impede rather than advance the object in view, by numberless minute and detailed provisions, which would strengthen the obligations arising out of slavery and prolong the existence of that which in any shape is an evil, and which, if left to itself, would probably die in course of time a natural death.

It cannot, after the Report of the Law Commissioners, be denied, I should think, that slavery in India is little more than a name. When a labourer knows that if he idles his master will not dare to strike him, that if he absconds his master will not dare to confine him, and that his master can enforce a claim to service only by taking more trouble, losing more time, and spending more money than the service is worth, such labourer is in reality no longer a slave. The condition of slavery can be but little an object of aversion when, on the experiment of emancipation being tried, as it was in Coorg, the majority of the slaves re-entered the service of their former masters, or attached themselves to others as domestic servants; nor can slavery be more than nominal when the only motive which induces a slave to do the will of his master is fear of losing the advantages of his situation; when a master is aware that he has no more power over his slave than a father over his children; and when the public authorities, generally

generally speaking, refuse to enforce the claims of the master either to the person or services of a slave in any part of British India.

Were we, therefore, only to take into consideration the character of slavery in this country, and its connexion, especially as regards agrestic servitude, with the distinction of caste, which nothing but the progress of civilization can obliterate, the best plan I should say would be to abstain altogether from interference, and leave it to time and the operation of the general principles of our administration to work out its practical abolition. But the evils of which slavery is the cause are so serious, and so prejudicial to the general welfare of the community at large, that we should neglect, I think, no means that holds out any hope of assisting to put a stop to it. It is one of the principal incentives to kidnapping, child-stealing, the sale and purchase of children, male or female, the murder of parents for the sake of their children, and leads to prostitution in the vilest forms, and all the revolting practices connected therewith. Were the entire extinction of slavery as a state in any way recognised by our laws to be authoritatively declared, much would be done towards diminishing the perpetration of these enormities; such a declaration might, I think, be made without the slightest difficulty, and it would put an end to the inconveniences and embarrassments which are everywhere felt, from there being no uniform rule on the subject, and from the law being one thing, and the practice of our civil and criminal courts another, in almost every district.

After the measures which have been adopted from time to time, both at Bengal and Bombay, for the suppression of slavery, the step I propose to take would create no discontent at either of those presidencies, where the feelings of Government and of the local authorities are well understood on the subject. Under the presidency of Madras, where slavery, especially in Malabar and Canara, is for the most part agrestic, no laws have yet been passed to discourage it, and the objectionable practice of selling slaves by public authority in execution of decrees of court still prevails; but there is every reason to suppose that emancipation would be received in those provinces as it was in Coorg, and viewed as a matter of indifference. It is a remarkable fact, that in no part of India have attempts to restrain slavery produced any unsatisfactory results. Of these attempts the most worthy of note are the proclamation of Sir C. Metcalfe at Delhi in 1812, and the rules passed by the Bombay government in 1820, neither of which excited the smallest opposition, although the one was issued in the ancient Mahomedan metropolis of India, where domestic slavery had predominated from the earliest period, and the other became law in a tract of country where slavery had taken as deep a root as in any other part of British India.

It is proposed, however, to postpone this grand measure until some future period, when it can be carried into effect with greater safety; but when that period is to arrive has not been stated. This is exactly the course which was pursued with regard to the practice of suttee; certain detailed rules and regulations were passed with a view to restrict within the narrowest possible bounds the performance of that rite, but which were found on trial to be attended with the exact contrary effect; and we were obliged to do at last what might have been done 20 years sooner with equal facility. In like manner the restrictions now recommended to be imposed on slavery by the Law Commission would legalise and confirm it to the extent allowed, and render its ultimate extinction not only remote, but a matter of much greater difficulty than at present.

The measure which I propose possesses the fourfold advantage of being one for which the greater part of India is fully prepared; of inflicting upon the holders of this description of property no injury of which they could reasonably complain; of reconciling the law with the practice of the local authorities, and of withdrawing from slavery throughout India the sanction and support of the British Government. No rights claimed as arising out of an alleged state of slavery could then be enforced by a magistrate, nor could human beings be any longer sold* by our civil courts in execution of decrees, like cattle or any other property. It would be an obvious inconsistency to forbid the one, while in any part of British India we openly allow the other. It appears to me that we cannot consistently pass a law

* *Vide* Letter from the Governor of Fort St. George, dated 3d instant, with enclosures; also, p. 240 of the Report of the Law Commission.

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law, declaring "that any act which would be an offence if done to a free man, shall be equally an offence if done to a slave," while we allow the sale of slaves by public authority. If anything be done at all, nothing will answer the purpose short of a declaration that the law no longer recognises any distinction between a free person and a slave, and that the courts, civil and criminal, are no longer competent to enforce any claim on the grounds of slavery. By such a declaration we should do avowedly what the Law Commission recommends should be done imperceptibly. We should release ourselves at once from the equivocal position in which we are placed by the law being one thing and the practice, generally speaking, another; and it would be clearly understood by all, as with the views we entertain it ought, that our design is no longer to recognise slavery in any form, or to countenance in any way the evils with which it is attended.

As to compensation, my sentiments may be expressed nearly in the words used by the Governor-general, which are as applicable to my proposition as to his Lordship. "Compensation for such a formal withdrawal of authority seems to me out of the question, both because compensation could not be given on a ground so little capable of exact estimation, and because the authority has actually ceased to exist in by far the greater number of our districts." I would not grant compensation, because the state of slavery in India is one not to be presumed against any person summarily, and because the probability is, that even with the aid of the Hindoo and Mahomedan law, but few claims arising out of that state, if brought for regular inquiry before a court, could be established.

In regard to the sale of children in seasons of distress, such as follow on occasions of inundation and famine, I see no necessity for any legislation on the subject. Such sales could not now, under any law in force, consign children to slavery, much less should the enactment which I have recommended become a part of the general code. Parents can convey no rights over their children to others, but such as they legally possess themselves; and a transfer of those rights, when the means of subsistence is no longer procurable, must be an advantage to both parties.

Further, I have only to add, that the recommendation of the Law Commissioners for the better enforcement of the objects of the statute 5 Geo. 4, c. 113, meets with my entire concurrence.

(signed) *W. W. Bird.*

Legis. Cons. 6 Sept. 1841. No. 12. Slavery in India.

MINUTE by the Hon. *H. T. Prinsep*, Esq. dated the 31st July 1841.

THIS extensive subject, embracing as well the different descriptions of slaves, the mode of their falling into slavery, and their treatment and habits, as the state of the law in regard to slaves in all parts of India, and the dispositions and bias with which it has been administered by British functionaries, has been so ably and fully investigated, and the results of the investigation have been so well brought together by the Law Commission, that I should have much preferred leaving their Report to speak for itself, and passing it for the purpose through the Council without observation or comment, if we had not been called upon by the Honourable Court of Directors specifically to state our own views and impressions as to the mode of dealing with the question hereafter, in order to assist the home authorities in their disposal of it.

2. No one can have passed through a career of 30 years' service in India without having at different times much considered this subject, so as to have opinions more or less matured upon it; I did not, consequently, take up the volumes which contain the Report of the Law Commission with a judgment quite unbiased. I have, however, perused them with much interest and pleasure, and have derived from the perusal a great deal of instruction on many points both of fact and principle. The Report is necessarily long, because it embraces the condition of slavery, and of the law and practice in regard to slaves in every province of this large continent, and includes the bordering countries, and indeed all the wide territories from the eastern coast of Africa to the Malayan Archipelago; it is therefore only the more complete on this account, the length being

being a consequence of the abundance of matter, and not of the method of treating it.

3. We have the satisfaction to believe, that the subject has been quite exhausted by the exposition of facts, and by the disquisitions this Report contains, so that henceforward it will be the text-book upon the data of which all future arguments and propositions will be founded. The Law Commission have well fulfilled their task by producing a work which thus brings within reasonable compass all the details of this wide subject; but our present business is not with these details; we have to consider and state our opinion on the specific recommendations submitted at the close of the Report, and to these therefore I shall confine my remarks. They are to be found at pages 366, 367, and 368; and though there is a slight difference of opinion amongst the members of the Commission, principally on the degree of authority that should be recognised in the master, under the supposition that existing slavery is to be tolerated for a time, and not abruptly abrogated, the difference is not sufficient to prevent the recommendations from being regarded as the united and matured opinion of the chosen men whose attention has so long been given to the investigation of this subject in all its bearings.

4. The Commission seem to think a law to be necessary to regulate contracts of bondage, and to prevent bondsmen and apprentices from being hereafter treated or considered as slaves. They further propose to recognise by law such slaves as are so by the Hindoo or Mussulman law, but to provide against any sale or transfer of such slaves, and to prohibit magistrates from enforcing the master's right over the slave person, to take away all distinctions as to offences against the person by reason of slavery, giving the slaves the same remedies as free men, even against their masters, and the right also of emancipation in case of cruel usage, prostitution, or misconduct of any kind in the master. They would likewise prohibit by law any transfer of apprentices' or bondsmen's contracts without their consent.

5. Some other provisions of less importance are recommended, and some of obvious expediency, which would of course be introduced into any law that might be framed. But I consider the matter for our present determination to have no concern with the particular provisions of law; we have first to dispose of the preliminary question, whether the case is one for legislation or for executive management? whether it is necessary and expedient to legislate at all upon the subject? whether, in short, a draft of law shall be laid before the Council to make provision for any matter whatever connected with slavery in India, or it shall be left to be dealt with, as heretofore, by the tribunals and executive authorities? If the question of legislating for slavery be decided in the affirmative, the details will follow to be settled according to the extent that it may be determined to proceed with our legislation.

6. It seems to be fully admitted by the Law Commission, that the status of slavery in India is not an evil to be compared in any way with negro slavery as it existed in the West Indies. The slave is not reduced to the condition of a mere working animal, to be compelled by dread of the lash to render a sufficiency of labour to compensate for the cost of his keep, and repay the outlay of his purchase. Such calculating cold-blooded relations of man to his fellow-creatures as follow from the habitual use of purchased slaves for every work of labour undertaken for profit, are entirely unknown in India. But they are not unknown in adjoining parts of Asia; for amongst the Oozbeek Toorkamans the evil exists, and produces the same violence and wretchedness that moved the compassion of Europe in the case of the negro slavery of the West Indies. There are these slave markets in every town supplied by the wholesale band of prisoners captured in war or in man-stealing expeditions, undertaken with no other aim. The influence and authority of the British Government is now at work to mitigate and correct this evil, where it thus exists; and already much has been done to narrow the field of its operation. But this state of things has never had existence in any part of this country since the connexion of the East India Company with its administration. In no town of India is there anything like a slave market recognised by the functionaries in authority; and if there are districts in which the agricultural labour is in part committed to slaves and bondsmen, these are not foreigners imported and purchased for the purpose, but races of men, *adscripti glebæ*, born and educated to the work of tilling the land

for hereditary or caste superiors, like the serfs of the middle ages, and the classe still found on the great estates of Russia.

7. With the very partial exception of this class of agrestic slaves, the Report of the Law Commission confirms the assertion often made in respect to the slavery of India, but first, I believe, placed on the record of this Council by the late Mr. H. Colebrooke, that it exists in the mildest of all possible forms, that of domestic servitude only. It is a mode of providing faithful and attached servants for domestic duties, in which the tie is reciprocal, and the treatment of the slave for the most part kinder and more considerate than would be that of a free man hired for the special duty, and having no claim but for his wages.

8. Now, putting for the present totally out of the question all consideration whether law gives undue power over the persons and property of domestic slaves, and is therefore susceptible of abuse, I think we may fairly ask whether any actual abuses have been discovered? What evils, and to what extent, have been made apparent? If we find that these are rare and far between, and that the domestic slaves as a body are contented and happy, even more so than the hired servants, the case is clearly not the same as that which has moved the sympathies of the humane of Europe; and we must not allow the feelings of compassion and pity excited by the long array of suffering and wretchedness brought to bear against the system of African slavery to mislead us to the belief that we are dealing with the same question when considering the state of slavery here in India. It is our duty to consider what we see and find of slavery entirely by itself, to deal with it as if such a thing as African slavery had never existed elsewhere, to provide remedies for the evils we discover and have experience of, and to do so with as little violence to feeling, and as much consideration for supposed or real rights as may be consistent with the attainment of the end in view.

9. And it has long been clear to me, that if negro slavery had never existed as a topic to be preached and declaimed upon in England and Europe, and if, in consequence, there had been no exaggerated feeling in respect to slavery in the abstract, because of the horrors and miseries which were found to attend this particular form of it, the condition of the slaves, and the customs and practices in respect to slavery which prevail here in India, would never have been regarded in the light of evils worthy of a special direction of the Parliament for their full investigation and correction. The investigation is now complete, and has been pushed with a searching spirit into every corner where there was a trace of slavery in an obnoxious form; but we look in vain for the grounds upon which the interference of this high authority can be justified—the "dignus vindice modus." It is in another quarter of the globe, at the very antipodes of India, that the case which has drawn the attention of Parliament to slavery is to be found. Here we are innocent of anything to call for such interposition. The state of things laid bare by the Report before us seems to be one especially to be dealt with by local authority. It is true that India is not quite sound; she has a little of the fever of slavery still on her, but it is the remains only of a status from which she is in course of rapid recovery, and she requires to be treated as the convalescent is treated whose disease is fast leaving him; she needs not to call in a strange physician to apply violent remedies, in order to conquer symptoms threatening to produce worse evils if left to themselves.

10. The Law Commission seem to be decidedly and unanimously of opinion that the evil of slavery in India is fast curing itself; that as the British authorities, wherever established, administer the law with a bias, of course, against slavery, and lend their influence indirectly also towards abolition, this circumstance alone must, sooner or later, do away not only with the evils and abuses, but even with the condition of slavery. They recommend that legislation shall be confined to such measures as will promote and expedite this result, and all the propositions they have submitted are framed in that spirit. In considering, therefore, the preliminary question, whether it is expedient to legislate at all, we may dismiss altogether the broad ground upon which some of the ultra abolitionists at home will probably attempt to inflame men's minds; viz. that slavery is a status that ought not to be allowed to subsist a moment in any British possession. For the good of the domestic slaves, and of other willing continuers in slavery, notwithstanding the facilities offered by the law to get rid of the condition, and with a knowledge of the bias of all administrators of the law in favour of the assertion of freedom, we are told by the Law Commission that we must proceed

proceed with caution, letting the slavery that exists continue until it expires naturally under a system of discouragement, and so allowing the condition of society to take the change desired without any arbitrary interference.

11. I subscribe implicitly to this view of the proper course to be pursued, and shall consider, therefore, the propositions submitted as they bear upon it; in other words, as they appear calculated to assist or impede the final emancipation of existing slaves, and the declaration and enforcement of the principle of universal freedom.

12. The first recommendation is, that the Government shall regulate by specific law the terms upon which an individual shall be permitted to assign himself or his children and others dependent on him. The aim of this recommendation is to prevent the sale of children into slavery, which is a common practice in times of scarcity, when the parents feel that unless so provided for, the whole family must starve. Some doubt has been thrown upon the questions of law arising out of this practice. The Hindoo law, I believe, recognises children so disposed of as slaves; the Mahomedan law, in some parts of India, does so also, on the ground of custom; in others it does not, on the ground that captivity in battle with infidels is the only recognised form for the conversion of a man born free into a slave.

See Madras Futwa, referred to by the Governor-general.

13. The recommendation of the Law Commission would place all bargains of this kind for children on the footing of apprenticeships for their good, and would allow full-grown persons also to hire themselves as bondsmen for any term of years or for life. There is no denying the equity and fairness to all persons of the principles on which this part of the Commissioners' recommendations is framed, and I have little doubt that the courts of law, admitting their soundness, would themselves enforce them, whenever a case to which they were applicable might come before them; but I doubt the necessity or expediency of declaring them by a specific law.

14. The proposition is entirely prospective, and would leave the slaves or servants who were already taken into families on the terms of purchase from parents excluded, and therefore, by inference, to be treated still as slaves. I think, if the question be left as it is, that the courts and judicial authorities in most parts of India apply these specific principles to the cases of existing infant-bought slaves, and on that account I should deem it very objectionable to draw a line which would have the effect of excluding them.

15. If, as now appears (and it is a point I shall presently come to), there is no criminal court which would assist a master in the assertion of a master's authority over a recusant slave, and if the process of civil suit, being the only remedy open, the decree in his favour is even then matter of doubt, we may take it for granted that no person, especially no one having the plea of free birth, need continue in the condition of a slave; and that, if he does so, the act is voluntary, and such as requires no interference of the Legislature to prevent. This very status of the law and of its administration by British functionaries is, I conceive, a better security for both present and future infancy-bought domestic slaves than any that would be provided by the proposed attempt to regulate by special Act the civil effect of contracts hereafter to be made; and it seems to me to be the law actually applied to such slaves, in by far the greater part of India, where only such domestic slavery exists.

16. The next class of recommendations relates to existing and future slaves; these propositions draw very tightly the line of what shall be considered such, while they open wide the facilities for obtaining exemption, and include rules prohibiting transfers by sale, and giving a title to release for ill-usage, prostitution, or misconduct in the master.

17. The peculiar feature, however, of the propositions of the minority of the Law Commission is, that they not only prohibit magistrates from assisting in the coercion of slaves, but two of the members propose to give the slave, further, the same remedy for assault, &c. against his master as free men have against each other, which, as observed by the majority in their after comments, is tantamount to an encouragement of the slave to defy his master openly, and refuse to labour; in other words, to set him free.

18. All the other propositions are, more or less, the same as have been acted upon by the public functionaries; but some of these functionaries have raised doubts, and their practice has not been uniform.

19. It is in order to make it so that the Commissioners recommend the propositions to be framed into a law; and I perceive that the Governor-general inclines to adopt that one of the propositions which would prohibit the magistrate from giving his interference to support the master in the coercion of his slave; but his Lordship would stop short with this, and leave the rest to the discretion of the courts and public functionaries.

20. If I thought that our courts and public officers would, in consequence of the investigation that has taken place, feel less inclined than they have been hitherto to follow out and act upon these principles, I should deem it necessary to enforce them by an Act or Government Order; but I think they show the disposition every day more and more strongly to apply the principles of freedom to the cases that come before them, and that to prescribe a fixed line for their conduct in this respect would fetter rather than enlarge their discretion. I confess, too, I participate in the feeling that if the master is made liable to an action for assault and false imprisonment, besides being deprived by law of any means of coercing a slave and compelling him to work, except by a civil action, and if this be inserted in a public enactment, the provision will be regarded and cited as an Act of perpetual and immediate emancipation, and that we should, by passing such a law, bring forthwith upon the Government claims from many slaveholders in different parts of the country for compensation equal to the value of the slaves' labour they will allege that they lose in consequence.

21. If the principle of refusing the magistrate's assistance be not enough, and that of allowing the slave a remedy against his master for a common assault, require also to be generally acted upon (and I believe it is so now in some parts of India), I had much rather the principle should be declared locally by the superior courts, as an incident of the existing state of society and of the laws actually in force, and so should be extended gradually from province to province, as cases occur to give the occasion, than that so strong a position should be put forth in a special enactment of this Government as one of general and immediate application to all parts of India.

22. For the same reason, therefore, that I would refrain from passing laws to confirm assignments of children to apprenticeship, I think it would be inexpedient and unnecessary to make provision by law to regulate who shall continue to be slaves, and what shall be their condition, rights, and responsibilities, and what the master's power over them; these points seem to me to be all in a train of sufficiently speedy settlement in the way we desire, by the quiet action of the courts, and forms of administration which exist, operating on the condition of things prevailing within their respective jurisdictions.

23. Slavery of the same kind that we find in India existed in Europe less than 300 years ago, and we have seen it gradually and quietly disappear under the influence of an adverse administration of justice and a feeling of society inclining to free opinions.

24. The same influences are rapidly at work in all parts of India, and we may safely leave to them the completion of the end already more than half attained. Assuredly the Government would never have thought of resorting to any other means than this gradual process of abolition, if those who have gained reputation by working out the abolition of negro slavery in the West Indies against an interested and strong opposition, had not fancied they had still work in hand in India, because slavery was not yet actually and entirely extinct there; but if this be an exaggerated feeling, which I doubt not the Law Commissioners' Report will prove it to be, so far as concerns this country, the Government, and those who control the Government, will be slow to yield to it, or to allow themselves to be turned from the course of their conviction by any outcry having such an origin.

25. I declare myself satisfied with the pace at which slavery is making its disappearance under the influence of an adverse feeling in the community and in the courts of justice; and I think that the appliances recommended by the Law Commission, instead of expediting, would retard the end. I observe that amongst them is no proposition to alter the law of property and of inheritance, which, under the admission of slavery as a legal status, is particularly severe; for all that belongs to the slave is the property of the master, and though married and with children, the acknowledged slave is capable of giving nothing to either. The reason, as I understand, why it has not been proposed by the Law Commission to touch this part of the question is, that they find the slave's right of acquiring

acquiring property to be in most parts of India tacitly recognised, notwithstanding that the letter of the law is adverse; and even where not recognised, still, under the supposition of the slave being in circumstances to create property, the difficulty the master would find of establishing against him the plea of slavery is, in the opinion of the Commission, sufficient to secure the alleged slave and his natural heirs against the master's claim; but if this part of the question be thus left to the natural bias of the courts towards freedom, why also should not those other branches for which the Law Commission have proposed specific rules?

26. In the recommendations of the majority this inconsistency is particularly apparent, for they propose to enact that the slave may purchase his own freedom, leaving the law as to his possessing any property to take its chance in the courts; surely this latter is a necessary preliminary to a self-purchase, and if one may be left to the known bias of judges, so also may the other.

27. I recollect more than one case in which the question of inheritance from a quondam slave was particularly involved; and others of the same kind may occur; so that, if any branch of the subject required legislative interposition, I should rather have felt inclined to begin with this. But my opinion is against bringing before the Council any law upon the subject, and I am well content, therefore, that inheritance from slaves and the administration to their estates shall be left to the conscience and discretion of our civil judges, like other questions in regard to their treatment or condition. The particular cases I have referred to are, first, that of Darab Ulee, the well known chief eunuch of the Fyzabad Begum: he had a large allowance secured to him upon the Fyzabad Government's six per cent. loan, and at his death he left a brother unconverted to the Mussulman religion, and I believe there were also several bequests by will. The King of Oude, however, claimed as heir of Darab Ulee, because he had been a slave to his grandfather, Shoojoodowlah; and this claim was allowed by the British Government (wrongly, I think, to the prejudice of all others), notwithstanding that Darab Ulee was of known Hindoo extraction, a native of India, and therefore a slave only by early assignment or sale by his parents.

28. Another nearly similar case occurred more recently at Moorshedabad, in which an eunuch of that family died possessed of property both personal and real, and I believe to this day the claims to it have not been definitively settled. But these are cases of too rare occurrence to need any special enactment, and I think it would be highly objectionable to recognise by positive law the peculiar condition in which such people stand towards the families in which they are still retained.

29. The above observations apply principally to the domestic slavery of India, which, except within very narrow limits, is the only species with which we have to deal.

30. The state of things in Malabar is different; there, it appears, the cultivating classes are mostly, if not entirely, slaves; indigenous, indeed, not imported, and therefore of the serf kind, and widely different from the negro slaves of the West Indies, but still existing in a state of degradation that it would be extremely desirable to abolish.

31. If the whole of India were now in the same condition as Malabar, I think I should have admitted the necessity of undermining the institutions of slavery which we find there by positive laws of the kind proposed by the Law Commission; but the district is isolated, and the assimilation of its condition to the rest of India must, I think, result gradually but surely from the many circumstances which are now in operation to break up its exclusive system; for, first, there is the continual resort of strangers for trade and settlement, which must of itself tend to produce comparison and change; then there is the single Government encouraging this change, and promoting free intercourse and the spread of free opinions; besides which, the administration of the province is conducted by functionaries trained to the condition of things that prevails generally, and not therefore favourable to its exclusive and peculiar institutions.

32. Relying, therefore, on the silent effect of all these influences, I incline to leaving the slavery of Malabar to its own process of decomposition rather than fixing by special law the line within which it shall be recognised as legal, a measure which I look upon as calculated to confirm and keep longer alive the so much as may be so recognised. *Sic orig.*

33. Of course I assume that the importation and sale of foreign slaves is everywhere prohibited, and criminally illegal under the existing laws; if this point be not

not sufficiently provided for, I am prepared to concur in any proposition calculated to make the prohibition more stringent. As for prohibiting the exportation of slaves, I incline to think this unnecessary, or, at any rate, that the provision would be nugatory. It is unnecessary, because, if our law gives the master no power over the person of an alleged slave, the latter has only to refuse to go beyond the frontier and he will be supported by the authorities in this resistance; and nugatory, because the fact of export carries both master and slave beyond the jurisdiction of the law, so as to enable the former to defy the penalty.

34. It will be seen, from what I have thus written, that I go even further than the Governor-general, in desiring to avoid legislating upon the subject of slavery in India; I think it better to let no laws stand on our statute book except such as are directed against the importation of slaves for sale: all else I would leave to our courts and authorities, in full confidence that they have the desire and the disposition and the means to bring about an entire abolition as fast as circumstances will allow. Of course it will be the duty of the Government executively to assist and encourage the public functionaries in this work; and there is one thing which I think the Government may do with great advantage, and ought to do immediately, and that is, to prohibit executing the sale of slaves by any public officer on any plea or under any process whatsoever. The necessity for this prohibition has been made apparent by a recent reference from Fort St. George, which shows that it is the practice at Malabar to take out execution for debt against slaves as against other property of a debtor, a thing unheard of in any other part of India, and quite inconsistent with the principles of our general administration.

35. This is the upshot of my opinion in regard to slavery in this country; I have not gone so fully into the subject as, perhaps, considering its importance, I ought, but have still, though desiring to state only the general result of my impressions, written more than I intended or thought to have done when I commenced.

36. All seemingly unite in the opinion that the work of abolition is in progress, and in the apprehension also that too much interference would probably defeat or retard the end. It is a mere question whether to apply any stimulus at all by legislation, at the risk of retarding or limiting the efforts now making towards the recognition of universal freedom. My judgment is against touching the subject legislatively; but the authorities in England may judge differently, and as they have mooted this question, we may leave to them to determine the course to be followed consequently upon the full investigation that has now been made.

(signed) *H. T. Prinsep.*

(No. 1229.)

Legis. Cons. 6 Sept. 1841. No. 13.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Judicial Dep.

Sir,

I AM directed by the Right hon. the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government, the accompanying correspondence * relative to the mode of giving effect to decrees of court as respects property in slaves.

2. You are requested to return the documents now forwarded.

I have &c.

Fort William,
3 August 1841.

(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

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* Letter to Register Sudder Dewany Adawlut, dated 30 March 1841.
Letter from Register Sudder Dewany Adawlut, dated 28 May 1841, No. 1961.
Letter to Register Sudder Dewany Adawlut, dated 23 July 1841, No. 2718.

(No. 462.)

From *F. J. Halliday*, Esq. Secretary to Government of Bengal, to *J. Hawkins*, Esq. Register of the Sudder Dewany Adawlut.

Sir,

I AM directed by the Right hon. the Governor of Bengal to request that the court will ascertain and report, for his Lordship's information, the manner in which it has been usual to enforce decrees adjudging persons to be slaves, in the cases in which the slaves may refuse to serve.

I am &c.

Fort William,
30 March 1841.

(signed) *F. J. Halliday*,
Secretary to Government of Bengal.

(No. 1961.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sudder Dewanny Adawlut.
Present,
D. C. Smyth, Esq.
Judge.

Sir,

I AM directed by the court to acknowledge the receipt of your letter, No. 462, of the 30th March last, and to transmit to you, for the information of the Right hon. the Governor, copy of a letter from the Officiating Judge of Sylhet (No. 26, of the 29th ultimo), stating the mode of giving effect to decrees which adjudge persons to be slaves.

2. As the question is now before Government, I am desired at the same time to forward a copy of the papers noted in the margin, * which may be considered as possessing some interest.

I have &c.

Fort William,
28 May 1841.

(signed) *J. Hawkins*,
Register.

From the Officiating Judge of Sylhet to the Court, No. 26, dated 29 April 1841.

I HAVE the honour to acknowledge the receipt of your letter, No. 1279, of the 16th instant, forwarding a copy of a letter from the Judicial Secretary to Government, and requesting information as to the manner in which decrees adjudging slaves have been enforced in this district, in cases in which the slaves refused to return.

2. In reply, I beg to state that the practice in such cases has been to commit the slaves to gaol till they consented to return to their owners, in conformity with the orders of the court. Such a proceeding, however, has been rarely found necessary, as it appears that during the last two years only one person has been imprisoned on this account.

3. I take this opportunity of suggesting for the consideration of the court, whether it would not be an improvement on the present practice if the courts were empowered to award, as considered expedient, either the services of the slave or the sum of money at which such services are (or might fairly be) valued.

(signed) *W. H. Martin.*

From the Officiating Magistrate of Sylhet to the Court, dated 3 February 1826.

IT having been invariably the custom of this district for persons to complain in the criminal court to compel their slaves to work who may be refractory or abscond,

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* Acting magistrate of Sylhet, dated 3 February 1826.
Court's orders to the Dacca Court of Circuit, dated 17th idem.
Dacca Court of Circuit, dated 7 April 1826.
Court's orders, 28th idem.
Officiating judge, Sylhet, dated 27 December 1832.
Court's reply, 18 January 1833.

abscond, and two different opinions having been given by the Court of Circuit, (copies of whose proceedings I herewith send), I request to be informed, for my future guidance, whether such complaints are cognizable in the criminal courts, or whether a master whose slave has absconded is only at liberty to complain in the civil court for his recovery. It may be as well to remark, that at the lowest computation, three-fourths of the inhabitants of this district are slaves.

(signed) *W. J. Turquand.*

From the Court to the Dacca Court of Circuit, dated 17th February 1826.

I AM desired by the Court of Nizamut Adawlut to forward to you the accompanying copy of a letter from the acting magistrate of Zillah Sylhet, dated the 3d of February, requesting the opinion of the court as to the course of proceeding which he should adopt on complaints being preferred by masters against their slaves for refractory conduct, &c.

In reply, I am desired to request that you will communicate to the acting magistrate the opinion of the court, that in no case of that description is he authorized to issue orders from the Foujdary Court, whether the right of property may be unquestionable or not.

The copies of the proceedings submitted by the acting magistrate are dated the 22d and 26th of April 1825, and were held by your senior and 3d judge.

The other proceeding bears date the 23d of December of the same year, and was held by your late 4th judge (Mr. Steer), in the case of Sheikh Doolar *v.* Muhdeeoozumum.

The orders contained in the proceeding of the last-mentioned date (confirming the previous orders of the magistrate), besides that it is directly contrary to the opinion before recorded by two of Mr. Steer's colleagues, being contrary to the notion entertained by the court as to the legal course of proceeding, you are requested to submit the whole of the proceedings and papers connected with the case in which they originated, for the information and final orders of this court.

(signed) *W. H. Macnaghten,*
Register.

From the Dacca Court of Circuit to the Nizamut Adawlut, dated 7 April 1826.

WE beg to transmit, for the information and final orders of the Superior Court, the whole of the proceedings and papers connected with the case referred to, and required in your letter of the 17th February last.

(signed) *J. Ahmuty,*
1st Judge.
C. Smith,
4th Judge.

From the Court of Nizamut Adawlut to the Dacca Court of Circuit, dated 28th April 1826.

THE Court of Nizamut Adawlut have had before them your letter, dated the 7th instant, together with the whole of the proceedings in the case of Muhdeeoozumum which accompanied it.

2. I am now desired to communicate to you the opinion of the court that the decision of your late 4th judge (Mr. Steer), dated the 23d of December 1828, affirming the order passed by the magistrate of Sylhet in the case of Sheikh Doolar *versus* the individual above mentioned, was erroneous and should be annulled, and that persons should not be made over to slavery by a summary order passed in a Foujdary court.

3. The court have been pleased to annul Mr. Steer's order accordingly.

4. You

4. You will be pleased to furnish the magistrate of Sylhet with a copy of this letter for his information and future guidance.

5. The original proceedings which accompanied your letter are herewith returned.

(signed) *W. H. Macnaghten,*
Register.

From the Officiating Judge of Sylhet to the Court, dated 27th December 1832.

As several cases of claims preferred against slaves for leaving their masters' service occur in this district, and I can discover no instructions on the subject in the Regulations, or among the circular orders of the court, and as it appears highly desirable that some specific rules should be laid down for the guidance of the courts of justice on this important subject, I have the honour to request that you will obtain for me the opinion of the SudderDeway Ad awlut on the following points.

2. Whether, and to what extent, the courts of justice are authorized to interfere on claims being preferred for the services of individuals, on the grounds of their being slaves, and having left their masters' service?

What description of slaves may be considered as legally authorized?

How the courts are to enforce a decree against an individual, against whom a decree of slavery may be adjudged, if he refuses to return to his master's service? Are the courts authorized to commit him to the civil gaol until he agrees to do so?

Are the courts competent in any cases to declare a slave to be free, and if so, under what circumstances?

3. In this district slaves are considered as property, and it has hitherto been customary, on an individual leaving his master's service, and a suit being preferred against him, on proof of the charge to pass a decree directing him to return to service, but as this practice appears to be unauthorized by any Regulation, I am desirous to obtain some specific instructions for my future guidance.

(signed) *F. Goldsbury.*

From the Court to the Officiating Judge of Sylhet, dated 18th January 1833.

I AM directed by the court to acknowledge the receipt of your letter of the 27th ultimo, requesting the court's opinion on certain points connected with the right of masters over their slaves; and in reply, to refer you to the accompanying extract from the court's proceedings under date the 29th March 1798, taken from papers relating to slavery in India, printed by order of the House of Commons, pages 74, 75.

(signed) *J. F. M. Reid,*
Register.

EXTRACT from the Proceedings of the Sudder Dewany Adawlut, under date the 29th of March 1798. No. 30.

Read the following Letter from the Judge of Zillah Chittagong to *J. H. Harrington*, Esq. Register to the Sudder Dewany Adawlut.

Sir,

IGNORANT of the practice in other zillahs in suits regarding slaves, and equally unacquainted with the intentions of Government on this very important point, I am embarrassed how to act in claims of this description; I receive repeated applications to compel the return of fugitive slaves, and lately a regular cause came on, on the following complaint.

Cummur Ally, Son of Aumeen Mahomed, *versus* Boody Daussee, Edie.

The plaint avers that the plaintiff's father and uncle, Shanker, bought Boody, daughter of a slave, in 1118 Mugy, or 41 years ago, and caused her to be married. She had a son born of this marriage, named Daussee, and also Foofuny, a daughter; the plaintiff caused Foofuny also to be married; they all absconded; Foofuny is dead, the three others will not return.

2. One of the said three persons is a servant of Mrs. Coates, lady of the commercial resident at this place, and I have suspended all process for compelling his return, and that of the other defendants, till I can receive orders from my superiors.

3. If slavery be allowed, I wish to be informed whether I am to refer questions of this nature to the laws and customs of the Hindoos and Mahomedans and native Christians respectively, or what other rules are to guide me in determining the circumstances, periods, and authentications of cabalas and engagements, which are to be considered as constitutive of slavery in this portion of the British dominions in India; and further, whether the child of a slave is the property of the owner of the slave.

4. In conclusion, I beg leave to say that it is not to escape trouble that I make this reference, but from real ignorance how to act in a very important matter, for which I see no provision in the Regulations.

I am, &c.
(signed) *J. Stonehouse*, Judge.

Zillah Chittagong,
15 March 1798.

The court have no doubt that the spirit of Section 15, Regulation IV. 1793, (which directs that, " in suits regarding the succession, inheritance, marriage, and caste, and all religious usages and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered as the general rules by which the judges are to form their decisions,") should be applied to the cases of slavery noticed in the above letter; but as these cases are not expressly within the descriptions of suits specified in the above section,

Resolved, that a copy of the judge's letter, and the foregoing remark thereupon, be transmitted for the orders of the Governor-general in Council.

(A true extract.)
(signed) *J. H. Harrington*, Register.

Ordered, that the Sudder Dewany Adawlut be informed that the Acting Governor-general in Council entirely concurs with the court in the opinion expressed by them on the reference from the judge of Chittagong regarding suits for slaves; and that Government accordingly request that they will furnish the judge with the necessary explanation for his guidance.

(True copies.)
(signed) *J. Hawkins*, Register.

(No. 963.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. Hawkins*, Esq. Register of the Sudder Dewany Adawlut.

Sir,

Judicial Dep.

I am directed by the Right honourable the Governor of Bengal to acknowledge the receipt of your letter (No. 1961) dated the 28th ultimo, with copies of documents stating the mode of giving effect to decrees which adjudge persons to be slaves.

2. The officiating judge of Sylhet explains the practice to have been " to commit the slaves to gaol till they consented to return to their owners, in conformity with the orders of the court." As the Sudder do not notice this, either in

in your letter to my address, or, as far as appears, in any reply to Mr. Martin himself, the Governor is uncertain whether the practice is to be taken as approved by the court, or disapproved; and upon this point the court are requested to report further, stating, at the same time, what they think of Mr. Martin's proposition for an improvement of the practice.

3. It may seem doubtful whether the nature of the suit, which is probably in every case only to establish the state of slavery in the party sued, can require imprisonment in order to enforce the decree; and it is still more to be doubted whether the law can be considered to justify such imprisonment. In reporting on this point, the court might transmit an abstract translation of an actual plaint and a decree, such as Mr. Martin has alluded to; and it would be well also to send up a translation of the warrant used for imprisoning a defendant in such cases. Further, his Lordship desires to be informed whether, so long as the slave may refuse to return to his owner, the imprisonment is uninterrupted. Perhaps a suit for a slave's services may ordinarily specify his value; and the defendant, when cast in such a suit, would be in the position of a debtor to the amount of his estimated value, who, being unable to pay, is imprisoned in execution. But to imprisonment on such a ground (the fairest, as it seems to his Lordship, on which such imprisonment can be at all justified), there would always be a limit, independent of any consent on the part of the defendant; and the debtor, on proved insolvency, would be absolutely set free. According to the terms of Mr. Martin's explanation, the imprisonment might be perpetual, even though the slave were insolvent.

I have, &c.

Fort William,
15 June 1841.

(signed) *J. F. Halliday*,
Secretary to Government of Bengal.

(No. 2718.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

With reference to your letter (No. 963) of the 15th ultimo, I am directed by the court to transmit to you, for the purpose of being laid before the Right honourable the Governor, copy of a letter from the officiating judge of Sylhet, regarding the imprisonment of refractory slaves, and of the translates of plaint and warrant which accompanied it.

Sudder Dewanny Adawlut. Present,—R. H. Rattray, C. Tucker, and E. Lee Warner, esqrs., judges; and J. F. M. Reid, esq., temporary judge.

2. It appears to the court that the object of complainants, in cases of the nature under consideration, is not to recover the value, but the possession, of fugitive or refractory slaves; and that the incarceration of those who have been adjudged to be slaves, and yet still refuse to return to their masters, is illegal, the only legal mode of executing such a decree being to make over the slaves to their owner. It is obvious, however, that against slaves who are unwilling to work, the legal mode of executing such a decree must be wholly inefficient, and that imprisonment was resorted to as a means of coercing adjudged slaves into the performance of their duty.

3. In such cases the court feel disposed to entertain favourably the suggestion of Mr. Martin, that the courts should be empowered to adjudge the value of the slave, in order that persons declared to be bondsmen may have the opportunity of redeeming themselves, if unwilling to return to servitude.

I have, &c.

Fort William,
23 July 1841.

(signed) *J. Hawkins*, Register.

From the Officiating Judge of Sylhet, to the Court; dated 8th July 1841, No. 34.

I have the honour to acknowledge the receipt of your letter (No. 2286) of the 25th June 1841, enclosing a copy of a letter from the Secretary to Government, Judicial Department, and directing me to submit abstract translations of a plaint, decree, and warrant in a case relating to right in slaves.

2. In forwarding the abstract translations required, I beg to explain that the warrant for imprisoning the defendants in this case cannot be found; and I have, therefore, forwarded a copy of the order directing their imprisonment, together with a translated copy of the warrant for their release.

It will be observed, that in this case the defendants were made over to their owners after a short imprisonment. This was ordered on a petition presented by the plaintiffs, which represented that they derived no benefit from the imprisonment of the defendants; that they had sued for their services, and not to have to maintain them idly in gaol; that they could not afford to pay six rupees per month; and that it was not to be expected that slaves, thus living without labour and well fed, would ever consent to return to their former labours. The slaves were accordingly sent back under charge of two peons, but, as I learn from a pleader who resides in the same village, immediately left their owners, and have never since rendered service to them.

For 3 Slaves, at the rate of 2 rupees per mensem, for each prisoner.

4. I have thought it proper to mention this, because, although it has not been the usual practice in this district to make over the slaves to their owners, it is the only direct mode of carrying such decrees into execution; and the plaintiffs in this case remonstrated against the imprisonment of the slaves at the expense of the master, in order to compel the former to return to service. On the other hand, if you make over to his owner an unwilling slave, there is the risk of his being ill-treated; and if he chooses to run away again immediately, as often as the court makes him over, his owner must either keep him in a state of illegal and unprofitable imprisonment, or he will eventually get the better both of his master and the court.

5. In further explanation of the particulars required in the 3d paragraph of the letter from the Judicial Secretary, I beg to state that suits for establishing a right in slaves usually pray that the slave be compelled to return to the service of the owners; and the decree of the court directs that the slave be caused to return to his former state of slavery. Although the plaint is laid at the estimated value of the slave, yet the claim is made and the decree passed for the services of the slave, and not for the estimated value of them; I cannot find that any slave has been imprisoned, in execution of such a decree, for more than four or five months; but, provided the slave continued to refuse to return to his master, and the master to pay in the usual subsistence money, I do not see that there is any fixed limit to such imprisonment. The judge would, no doubt, after a time, order the prisoner's release; and it is improbable that the decree holder would long continue to pay for his slave's imprisonment at a rate which would, in a very few months, exceed the actual value of the slave.

6. I beg to add, that the proposition contained in the 3d paragraph of my letter, under date 29th April, would, I consider, be beneficial, as affording a remedy for occasional cases of hardship, when a slave might be able and willing to pay the actual value of his services to obtain his freedom. I do not think an owner can fairly complain who receives the money value of the services of a slave, as with the same he can procure a willing instead of an unwilling servant; whilst there are many cases in which the offspring of slaves, who have settled as ryots, or married in other parts of the country, could pay or procure from others their estimated value, and, by purchasing freedom, could escape a serious evil to themselves, without any injustice to those who might possess a right of property in them. Ill-treatment of slaves is, I believe, rare; but there may be cases in which a slave would willingly transfer his services to another to escape from a particular master; and if it was understood that the courts might either award the services of a slave, or the value of such services, such a knowledge would probably much facilitate the purchase by slaves of their freedom at its fair price.

(signed) *W. H. Martin*, Officiating Judge.

Abstract of actual Plaint in Case relating to Right in Slaves.

The petition of plaint of Mussamat Goosain Beebee, Mahomed Moossun, &c. is, "that Sonai, Monai, and Danish (males), Soobun and Fonnan (females), are our hereditary slaves; that Khosal the father, and Aga the mother, of these slaves, were the slaves of our father; that Mussamat Sona, the mother of Khoshal, was also the slave of our father, and that Ikteyar, the father of the said

said Sona, was in like manner the slave of our ancestors; that notwithstanding this, in 1225 B. S. Sona, Monai, and other defendants, ran away from us, and have taken up their residence in the lands of Mahomed Kamil, in pergunnah Beraya. These slaves were fed sometimes from our table, and sometimes separately, but lived in the same house; we fed and clothed them, and they served us as slaves. They have run away without reason; indeed, the daughter of Sona, with her son, still lives with one of the family. We complained to the magistrate, but were referred to the civil court; so we now (valuing the services of each slave at 12*rs.* 12*as.* 10*ps.*, in all, for five slaves, 64 rupees), pray that the court, after taking from us due proof, will order the said slaves to return and serve us in the usual manner."

1 December 1824.

Brief Abstract of Decree passed by Mr. *C. Barry*, Register, on the 18th February 1828.

Mussumaut Goosain Beebee, Mahomed Moossun, &c. plaintiffs; Sonai, Monai, Danish, male slaves; Soobun and Fonnan, slave girls, Mahomed Kamil, &c. defendants, claim right of property in the above-mentioned slaves, valued at 64 rupees.

This decree recapitulates the plaint, which states that the defendants are the hereditary slaves of the plaintiffs, and prayed that the court order them to return and serve the plaintiffs in that capacity.

The defendants deny the justice of the claim; affirm that they are free; that Mussomat Sona, their grandmother, was married (by nikah) by Mahomed Ruffeh, the uncle of plaintiffs; and that one of the issue of such union was Khoshal, the father of the defendants. They add, that Mussomat Sonai was the daughter of a free man, and Aga, their mother, was also the daughter of a free man. Their assertions are denied by plaintiffs. The decree then states that the witnesses of the plaintiffs have proved their claim, and that the defendants are hereditary slaves, and, as such, rendered service to the plaintiffs; that the witnesses of the defendants have proved none of their assertions; indeed, one of their witnesses has given evidence that the defendants are the hereditary slaves of the plaintiffs; it is, therefore, ordered that the defendants Sonai, Monai, Danish, Soobun, and Fonnan, shall be obliged to return to the service of their owners, each party to pay their own costs.

Order passed on the 14th December 1832, in a case of execution of decree, adjudging the services of slaves.

This day the decree in this case was read in the presence of the slaves, as the three slaves who have been apprehended refused to return to the service of the decree holder; it is, therefore, ordered that they be imprisoned in the civil gaol.

Warrant for Release of Slaves, making over the same to the Owners.

Shaik Golam, Murtezo Nazir.

Whereas Mahomed Moossun, &c. &c. have petitioned that the court do order to be made over to them Sonai, Monai, and Danish, their slaves, now imprisoned in the gaol in execution of a decree, because the said slaves refused to return to the service of the petitioners; it is, therefore, ordered that the nazir do make over the said persons to the petitioners, taking a receipt for them from the same.

2 February 1833.

(True copies.)

(signed) *J. Hawkins*, Register.

Legis. Cons. 6 Sept. 1841. No. 15.

MINUTE by the Honourable *A. Amos*, Esq. dated 5 August 1841.

I PROPOSE in the first instance to go through the Minutes of Council, expressing my assent or dissent with regard to the different propositions contained in them, and adverting to such objections as have been made to the report. I will then proceed to express my own views.

2. I entirely agree with the Governor-general in opinion, that if an Act be passed prohibitory of magistrates interfering to enforce any alleged rights of slave-owners, and rendering whatever would be criminal act, if committed against a freeman, equally criminal if committed against a slave, such an Act would supersede the necessity of most, if not all, of the detailed provisions recommended by the Law Commissioners; for it appears to me that the recommendation of the minority of the Law Commissioners to pass an Act so general in its character is quite inconsistent with minute provisions respecting sales, emancipations, and other partial remedies. The recommendation of the minority of the Law Commission would point out to the slave a way of emancipating himself, without any kind of formality, and whenever he pleased, and at the same time would indicate a multitude of ways of emancipating himself according to prescribed forms, requiring the consent of his master or the intervention of magistrates; it would confer freedom, and at the same time make elaborate provisions adapted to the continuance of slavery.

3. I agree further with the Governor-general in opinion, that passing the above-mentioned Act would be simply giving greater publicity and authority, in part, to the practice of magistrates in their abstaining from all active interference on behalf of masters, which, under the sanction or directions of Government, has become nearly universal, and for the rest to the Madras futwa of the date of 10th February 1841.

4. I have doubts as to the sufficiency of the reason assigned for prohibiting the interference of the magistrates, when it would be in favour of the alleged master, viz. that slavery is not to be presumed against any person summarily, especially if the prohibiting such interference be considered equivalent to denying all legal remedy of a practical nature.

5. I am not impressed in like manner with the Governor-general as to the accuracy of a statement, which appears to me to have influenced several of his Lordship's reasonings; viz. "That it will be found that almost, if not at this time quite universally, no compulsion by a master over his dependent is admitted by our criminal courts, and that any force used by him towards his so-called slave is punished just as it would be if used towards a freeman." Though I admit that if the Madras futwa of the date of February 10, 1841, be considered as declaring the law on the subject with any approach to truth, it would go far to prove the statement substantially correct.

6. I have been unable, after many endeavours, to adopt the opinion upon which so much of his Lordship's reasoning and recommendations appear to me to be founded, that the criminal law is correctly stated in the Madras futwa, dated February 10, 1841. When I shall come to examine this futwa more particularly, I trust it will be seen that I do not assume any greater competency as a lawyer to form an opinion upon it than any other member of Council; but without impeaching any judgment upon the views entertained in this and the next Minute, I think the subject may deserve to be regarded in a different light from that of a mere question of a Mahomedan law, which is the aspect under which it has been treated.

7. Upon the grounds stated in pp. 5 and 6, of the first Report on Slavery of the Law Commission, I do not feel convinced that "the Mahomedan criminal law, being that which, with specified limitations and exceptions, is administered in our courts, there is no reason why any benefit which it gives to persons in a condition of servitude not of the strict kind, that alone it recognises and sanctions, should be in any degree denied or abridged;" at least I do not distinctly see the application of this reasoning to the question at issue, viz. whether the British Government, in applying the Mahomedan criminal code for the government of Hindoos, have interfered with the Hindoo law of status?

8. Though I have concurred with the Commissioners in various reasons showing the inefficacy and impracticability of compensation, I have not been convinced of the fact, "that the authority, wherever exercised, rests upon no valid ground," and still less of the force of the reasoning as regards districts where

where slavery has not ceased to exist, "that it has actually ceased to exist in by far the greater number of our districts."

9. I think the Minute under consideration may very probably lead to a misconception, which, upon close attention, it does not appear to me to warrant, viz. that the majority of the Commissioners had proposed the "concession" of an authority of moderate correction and restraint, and recommend committing that authority to masters. It would be evident, from an inspection of the Report, that what the majority of the Commissioners observe is to this effect; viz. having taken away all remedy by coercion or restraint through the intervention of magistrates, whereby it is generally admitted all practical support, in which the state is any way active, is taken away, if the master's power of moderate correction, and of restraint from absconding, be also taken away, it is tantamount to the absolute abolition of slavery. The majority of the Commissioners feel all the repugnance felt by his Lordship to entrusting the most moderate correction or restraint to masters, though, under the various important checks which they have detailed, they think that the not taking away of these objectionable powers from masters is the least inexpedient of the several alternative evils which they have enumerated. Whether the evil of allowing a master, as he has been accustomed, to prevent his slave from absconding, be an evil which preponderates over that of transferring this power to the magistrates, his Lordship has not, I think, particularly discussed; nor has his Lordship suggested any other alternative but what in effect amounts to uncompensated abolition. In objecting to the powers of coercion and restraint continuing in masters (not being committed or conceded to them), his Lordship only apparently, and not really, differs from the majority of the Commissioners. The point upon which the Commissioners differ from his Lordship is, they do not conceive the ancient evils in question, great as they admit them to be, but diminished by several important checks, and subjected to further checks under their recommendations, are so great as those which would probably attend a sudden uncompensated abolition; and moreover, they think that by imposing further checks on the evils in question, practical good must result, but that an attempt at absolute uncompensated abolition is very likely to prove a futile measure.

10. With regard to the opinion that "the adoption of all the minute and detailed provisions recommended by the Law Commissioners would much rather impede than advance the abolition of slavery," I entirely agree with it, provided the Act proposed be passed; but if slavery be not avowedly abolished, or indirectly, but virtually, abolished according to the proposed Act, then I think that although all the provisions suggested by the Commissioners may not be expedient, yet the Commissioners will have performed a very useful task in laying before Government all the provisions which have occurred to them as tending to ameliorate the condition of slavery; and, upon the same supposition that slavery is not openly or indirectly abolished, some at least of the propositions contained in the Report would, I am persuaded, meet with his Lordship's concurrence, as being in the nature of the rules brought forward by Mr. Canning, which he characterizes as operating to mitigate the system of slavery, and render it more tolerable in its existence, and as opening ways by which slavery itself may escape gradually, and as it were imperceptibly, without the shock of a convulsion.

11. Though the Commissioners were sensible that what they proposed would recognize the validity of transfers of slaves, yet they thought that whilst it was obvious they could not ameliorate slavery by law without recognizing the validity of the status, that status, and the validity of transfers even, had been fully recognized in Indian legislation, in the most systematic manner, so late as 1827, and though less formally, also in 1832, independently of other public modes of recognition. It may be observed with reference to the remark, "If we connect the public officers with registry of the sales of persons as slaves, how shall we be able at any future time to treat those transactions as otherwise than perfectly valid, or to deal with claims of consideration and compensation which may be preferred by purchasers?" That the registration of sales of slaves by magistrates is already a part of the law of one of our presidencies, *see* sect. 31, Regulation XIV. of 1827, Bombay code; and I am not sure that the admission contained in this query, when coupled with the Bombay Regulation, may not be considered as qualifying the other opinions in the Minute against compensation. Besides, I do not see that the registering of transfers by magistrates is a more

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solemn recognition of the status of slavery on the part of Government, and, as such, giving title to compensation, than the sale of slaves in execution of decrees, which has been habitually practised.

12. I fully concur in opinion, that the civil law of slavery, if the Act proposed be passed, cannot be deemed a "pressing and general evil, and that all which is legally coercive in the maintenance of the status of slavery will be destroyed;" but upon the question, whether, if we go to the length of passing the Act in question, we should not directly and completely abolish slavery, I prefer the view of Mr. Bird to that of the Governor-general; for I think Mr. Bird's plan will avoid many nominal and perhaps real inconsistencies which the proposed Act would create; and I think the Act would not indicate clearly to master or slave the change which Government was making; neither would it give satisfaction to the body of persons in England who are pressing the abolition of slavery in India. But, possibly from a caution incident to my own comparatively slender experience of what relates to the feelings and habits of the Indian community, I think, with the utmost deference, that these authorities both go too far, and that for the sake of attaining our common object immediately, their proposals would be attended with the risk of great dangers, and of frustrating the very thing we have all in view, whilst in the opinion of some uninterested persons at least, who have devoted great attention to the subject, we should, by acting on those proposals, in our desire to promote liberty and humanity, be unconsciously doing an act of signal injustice. I may add, that I feel considerable support in this part of the case by finding that Mr. Prinsep agrees with me in deprecating both the proposals of the Governor-general and of Mr. Bird.

13. With regard to the Minute of Mr. Bird I fully agree, both in his conclusion, and in the reasons for that conclusion, that if there is no sufficient objection to passing the proposed law, on the ground of its being too violent an infraction of existing rights and habits of society, or of its being unjust towards persons entitled to slave labour, we ought to abolish slavery in the most absolute and the plainest terms.

14. I fully agree with Mr. Bird in thinking that the recommendations of the minority of the Commissioners are quite inconsistent with themselves, for the reasons he has stated, as well as for the distinct reasons contained in his Lordship's Minute; a declaration in favour of the continuance of slavery, and a series of minute provisions for its regulation, would stand as singular clauses of "An Act for enabling every Slave to become his own Master."

15. I am not quite satisfied of the fact that, "in India, slavery is little more than a name;" at least I do not think that this conclusion can be safely inferred, when stated to rest upon an hypothesis, that according to the present law and practice of India, "The labourer knows that if he idles, his master dare not strike him; that if he absconds, his master will not dare to confine him; and that his master can enforce a claim to servitude only by taking more trouble, losing more time, and spending more money than the service is worth." Such was obviously not the meaning of the persons whose words are quoted; such, however, I apprehend, would be the real effect of the Act proposed; and I admit that the futwa of the 10th February 1841 would go far to show that the statement was true, if not in fact, at least in point of law, without any new legislation; but I think it will appear in the sequel that the futwa in question is not entitled to the slightest consideration, even as a statement of law. Leaving that futwa for after examination, it may be noticed by the way, that at Bombay the judges of the Sudder Court are of opinion that the magistrates are bound by the Bombay code to compel slaves to work.

16. I have not been able to satisfy myself as to the conclusions, which would give me the highest gratification could I adopt them. "That a declaration of the entire extinction of slavery might be made without the slightest difficulty; that there would be no discontent at Bombay and Bengal;" and "that there is every reason to suppose that in Madras emancipation would be received as a matter of indifference." I do not collect on what ground local opinions on this subject deserve to be totally disregarded, as that of the Superintendent of Coorg; that he "knows of no change that would be likely to give rise to so much alarm and bad feeling as the adoption of any measures likely to weaken the right which masters now possess to the labour of their slaves."

17. Though I should attribute weight to the reasoning founded on the precedents

cedents of Sir C. Metcalfe's declaration at Delhi, the Bombay rules of 1820, and the prohibition of suttee, yet I should not be equally disposed to assign the same cogency to the argument derived from these precedents. It may be observed that the only information obtained as to the operation of the Bombay rules of 1820 is, that the sales of slaves had not diminished, but that their prices had been increased; and in 1827 these rules were superseded, and the sale of slaves expressly permitted, according to systematic arrangements, including transfers under magisterial authority by a formal Act of Legislature. It may be observed, moreover, with regard to suttee, that although it may afford some analogy to show that our authority will not be resisted, it has not equal relevancy to a question of justice as to taking away valuable rights long recognised and enforced by the British Government.

18. I have been unable to satisfy myself that the taking away from masters such rights to the labour of slaves as they now practically enjoy "would be inflicting upon the holders of this description of property no injury of which they could reasonably complain." The position must obviously be read in connexion with what is afterwards stated in the Minute, "That the probability is, that even with the aid of the Hindoo and Mahomedan law, but few claims arising out of the state of slavery, if brought for regular inquiry before a court, could be established." Now I am apprehensive that this probability may be here stated too broadly; for it would seem that the Madras courts have been long in the constant practice of establishing great numbers of such claims. And if an impartial inquiry be afforded, such claims might, I conceive, be more easily established than such as depend upon most other controverted facts. It may be noticed, that the judges of the western provincial court for Malabar and Canara observe (App. 446), 'The competency of the master to transfer the slave by sale, mortgage, or lease, according to the ancient laws and customs of the country, has never been disputed or doubted in these provinces.'"

19. As I have observed with reference to the former Minute, I do not feel satisfied with the force of the argument against compensation, as applied to districts where a right to slave labour has been recognised time out of mind, and is now generally enforced, "that the authority has actually ceased to exist in by far the greater number of our districts," even admitting that the hypothesis is not too broadly laid down. Nor do I feel convinced by the argument, as directed against compensation, "that the state of slavery in India is not to be assumed against any person summarily."

20. I have before observed, that if even the Act proposed be adopted, and still more, if a declaration of general and absolute emancipation be adopted, most, if not all, the detailed provisions, whether proposed by the majority or minority of the Commissioners, become nugatory, and that their operation would only be to continue what at the same moment was annihilated. But if slavery in India is not to be totally abolished, either directly, according to Mr. Bird, or virtually, but indirectly, according to the Governor-general, I am not sure that I collect from the Minutes that what ought to be done in such a conjuncture has been very minutely examined. Nor was this to be expected, because it is the decided scope of both those Minutes to propose courses, the adoption of which would exclude the supposed conjuncture. But if such a conjuncture shall arise, I doubt whether the opinion that, "If anything be done at all, nothing will answer the purpose short of a declaration," &c. might not require some modification. I am disposed to think that in the conjuncture supposed, some selections might be made from the numberless minute and detailed provisions set forth by both sets of Commissioners, which might be thought more beneficial as correcting the abuses of slavery, and facilitating emancipation from it, than injurious on account of their supposed tendency to strengthen and prolong its obligations. It may be observed that, in point of fact, the number of provisions suggested by both sets of Commissioners are, when put together, about 30. The provisions of the Bombay Code, which embrace only a small part of the subject, are in number 10; whilst of those in the Report, several are auxiliary merely; as, for instance, what courts are to take cognizance, and then what appeal is to be? Others relate to apprenticeships and the hiring of free persons, which may be very deserving of consideration, even though slavery should be abolished, in order to prevent its continuance under colourable forms. Mr. Prinsep rightly observes, that "some of the recommendations are of obvious expediency, which would of course be introduced into any law that might be framed," and that "others have the object merely of removing

doubts, and producing uniformity in the existing practice of our public functionaries."

21. With regard to Mr. Prinsep's Minute, I entirely agree with its leading principle, "that the work of abolition is in progress, and that too much interference would probably defeat or retard the end; and that it is a question whether to apply any stimulus by legislation, at the risk of retarding or limiting the efforts now making towards the recognition of universal freedom."

22. I agree also with Mr. Prinsep in thinking that opinions have been expressed upon the subject of Indian slavery, by a large body of persons in England, which are highly exaggerated and inappropriate; and that even where they emanate from the pure feelings of humanity, they will often be found to be the result of an imperfect or erroneous view of facts. I received great pleasure in collecting from Mr. Prinsep's Minute, that now every individual, both in Council and the Law Commission, is agreed upon the mild character of what has been termed slavery in India, and also on the fact that it is gradually falling into desuetude. With reference to an apt historical example adverted to by Mr. Prinsep, I may add that the remarks of Sir John Smith, in his "Commonwealth of England," written in the reign of Edward 6th, as to the gradual decay of slavery in England and France, are suitable to India, though I apprehend that legal slavery in England was of a more severe character than what is exhibited in the Report. It may be observed that the friends of abolition have sometimes been very anxious to distinguish the slavery of the colonies from English villeinage, which in its nature bears a considerable resemblance to the Indian slavery of caste.

23. I am glad to have the support of Mr. Prinsep's opinion, that the proposed law by which masters should be made liable as for assault, in exercising the only practical means left them of enforcing the service of slaves, would be tantamount to an encouragement to the slave to refuse to labour, would be regarded as an act of perpetual and immediate emancipation, bringing upon the Government claims for compensation from all parts of the country.

24. I notice an important observation in Mr. Prinsep's Minute, that, "if the whole of India were now in the same condition as Malabar, I think I should have admitted the necessity of undermining the institutions of slavery, which we find there, by positive laws of the kind proposed by the Law Commission." My own opinions have been materially influenced by the condition of slavery in the Madras presidency. In confining the observation to Malabar, there is an obvious omission of the 60,000 (sixty thousand), and according to one account 82,000, slaves of Canara, besides those of the Tamil country; and with the greatest deference, I may remark that the Council has not the advantage of any of its members being practically conversant with the nature of Madras slavery, and therefore their opinions on the subject are not entitled to the same very high weight which attaches to their opinions connected with Bengal; I must own my regret that I cannot coincide with the views of the actual state of slavery in the Madras presidency taken by any of the members of Council. I apprehend that slavery of an agrestic kind exists in the Madras presidency very widely and numerously; that it is amply confirmed by usage and law, and that any abrupt prohibition of it by Government would be most sensitively felt, and would materially affect the nearest interests of a great mass of population.

25. Upon the subject of adopting the recommendations of the Law Commission generally, I differ in opinion with Mr. Prinsep, that the progressive impairing of slavery can be expediently left to the courts of justice. I have a strong conviction, and in this I think I shall be supported by Mr. Bird, that it is extremely inexpedient to allow our courts and magistrates to warp the law for the purpose of undermining any practices, however odious; such a course must destroy all confidence in the administration of British justice; it encourages lax and varying principles of decision to which Indian tribunals, under the notion of "equity and good conscience," are far too prone. Besides which, the uncertainty arising from the law being differently administered in different districts, and by successive functionaries in the same district, is an intolerable evil; any interference of Government executively in impeding the course of justice by preventing the sale of slaves in execution of decrees, or otherwise substituting its will for the dictates of law, cannot be too strongly reprobated. I may add that the administration of law by our courts and magistrates in matters of slavery, as it is detailed in the Appendix to the Report, is not such as it is desirable to continue, still less to encourage.

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26. On the effect of particular recommendations proposed by the Law Commissioners, the other members of Council are very much indeed more competent to decide than myself. Some observations occur to me with reference to Mr. Prinsep's remarks upon the subject; but I think it will be more convenient to reserve them until it may be found necessary to enter on the consideration of such details.

27. It may be allowed to correct a mistake which runs through several paragraphs of Mr. Prinsep's Minute, viz. that the majority of the Commissioners are guilty of an inconsistency in not recommending that the property of slaves should be secured to them. The majority of the Commissioners do make that recommendation in page 376 of the Report. I am happy that their view is so far confirmed by Mr. Prinsep, that he thinks that if there be legislation at all, this is the first measure which should be adopted.

28. Having thus expressed my assent or dissent with regard to the different propositions of the other members of Council, I do not think it necessary to go over the same grounds which I have done in conjunction with the Commissioners in the Report. I would not, for the reasons there stated, abolish slavery directly with Mr. Bird, or pass the Act proposed by the Governor-general, which would abolish it virtually, though indirectly. I would not abstain altogether from legislation with Mr. Prinsep, because I deprecate making use of the bias of the courts as a means of undermining slavery; because the administration of justice in matters of slavery requires to be made more uniform and certain, and because I think more good than mischief may be produced by making provisions for restraining abuses of slavery and for facilitating emancipations. The provisions for this purpose contained in the Report may be thought too numerous, and falling occasionally too much into minute details. But this is a fault on the right side, as thereby the discretion of Government would be chiefly exercised in selecting, instead of devising expedients, which I conceive is, perhaps, a function more appropriate to it.

29. I am happy that the Commissioners are confirmed by Mr. Prinsep in their opinion, that "we ought to proceed with caution, letting the slavery that exists continue until it expires naturally under a system of discouragement; and so allowing the condition of society to take the change desired without any arbitrary interference." It appears to me that objections to the immediate abolition of slavery may be founded on the danger of public commotion, or more probably, among a timid and uncombined population, of concealed disaffection, in the end more injurious to the British Government, on an impression that we should violate our pledge of not interfering with the ancient laws of the country, especially those which for a series of years we have upheld in the solemn manner, and which affect the livelihood of great numbers throughout whole districts; and that we should be doing injustice by depriving many individuals of long acknowledged and valuable rights without compensation. I look also to the probable impracticability of dissolving, by any positive enactment of our own making, ties of society which unite hundreds of thousands of persons according to usages dating long anterior to the British Government having any connexion with the country, though I think that what may be impracticable for general good, may nevertheless, in this instance, be productive of considerable irritation, and occasion much misery.

30. I would, therefore, protect and accelerate, by the methods proposed in the Report, the operation of the circumstances which are tending so favourably of themselves to work out the extinction of slavery in India; I would not abruptly anticipate the gradual but inevitable course of events, by substituting this wisdom of man for that of nature. It will, I think, appear, that the progress of human improvement in various ages and countries has been advanced less by any fiats of government, than by strengthening the checks universally acknowledged to be operating for the destruction of abuses, and which are the more safe and effectual as tried by experience, and as based on that progressive revolution which society is undergoing towards the attainment of an order it has of itself a tendency to assume.

31. I would further remark, what in making the Report would have been irrelevant, that if the proposed Act be passed, it may be proper in the preamble to state its operation very fully; for I apprehend few of the parties interested would collect the real operation of the enactment from the bare perusal of its terms. I am warranted in this opinion by the circumstance that both the Ma-

dras Government and the Madras Sudder Court, in their most recent communication upon this subject, observe, that if compensation be deemed just in the case of an enactment prohibiting assaults committed on slaves wherever they are prohibited if committed on freemen, *à fortiori* it will be just if an Act be passed prohibiting the sales of slaves in execution under decrees; but the Madras authorities could never have entertained this opinion, if it had been stated in the preamble of the Act, agreeably to its actual operation, that "Whereas Government has taken away all but one practical mode of a compulsory kind for preventing slaves from absconding, and for compelling labour, obedience, or respect to masters to the smallest extent, and it is desirable to take away this mode also, it is therefore enacted," &c.; or thus, "Whereas it is expedient to abolish the assumed right of persons pretending to be masters of slaves to correct moderately or otherwise the persons alleged to be slaves, for neglect or disobedience, or to do anything which in law amounts to an assault, for the purpose of preventing such persons from absconding, or bringing them back."

32. It is remarkable that in several places to be found in the Appendix, judicial functionaries state that there is no distinction in criminal courts with regard to assaults or other offences committed by masters or by slaves, and yet in the very same communications they acknowledge the master's right of moderate correction for neglect, and of restraint from absconding, and even quote authorities for the point. The proposed Act contains the like general terms, and from the manner in which these functionaries express themselves, I apprehend it bears a popular or superficial import quite different from its real effect.

33. To understand the Act, it is necessary to divide it into two parts. It provides, first, in effect, that if a master in correcting his slave or restraining him from absconding, goes beyond a very moderate assault, or if the correction be without adequate cause, the master shall not say "these are causes for which I may use violent correction," or I may correct my own slave without cause; nor shall he say that "my evidence or personal treatment in court is to be differently regarded from that of my slave." Now so far the Act introduces nothing which has not been always well established and well known law throughout India. Nevertheless this nothing would, if it had any new effect, be so consonant to obvious justice and humanity, as at once must kindle the feelings of every person not familiar with the actual state of the law and practice in India: so far, indeed, the Act works no change; but its general terms may nevertheless prevent a distinct comprehension, and prejudice the consideration of its further import, and of the real change it does effect.

34. For, under general terms applicable to grievous assaults without cause, it includes, secondly, that moderate correction and restraint which, under various important checks, is the last practical means left to maintain slavery in India. The momentous effect of the Act, that of protecting idle, disobedient, or runaway slaves, is out of view, to be discerned only by the telescopic glass of reasoning. A slight kind of assault with cause, is indeed inclusively prohibited, but in terms including equally aggravated assaults without cause, which were prohibited before, whilst by a consequence nowhere alluded to in the Act, an important civil right is annihilated. Government having reduced the practical remedies of a right to one which has something objectionable connected with it, afterwards gets rid of the right by an enactment apparently aimed only at the objectionable matter in abstracts. It has generally been considered a principle of jurisprudence, that where there is a right, the State should supply a practical remedy, but here the right is destroyed by a novel process, that of an atrophy, and successive exhaustions of remedies.

35. And I may notice a popular objection to the continuance of slavery in any shape, which I have no doubt influences very many persons in England, and some in this country. It is argued that slavery is so contrary to natural law, justice, and humanity, that no one can with reason talk of any rights under it, complain of its abolition, or demand compensation. Though the system be sanctioned by usage, these persons would say, so also is Thuggee and various other customs to which the maxim of the civil law applies, "Malus usus abolendus est." Here I would distinguish. The recent futwa states, that the slaves of the country in the Madras presidency, whether of the dher or paria, or any other caste, have all been sold by their parents. This will be shown to be one of the grossest misrepresentations of fact ever made in any public document. The sales of children may, I think, be viewed, for the reasons stated in the

the Report, to be an abuse of the ancient system of India slavery. The practice, I conceive, is illegal, without requiring any new law to abolish it, though, like other abuses of slavery, it may require more stringent checks than can be applied under the present law. The abolition of the practice, though on a recent occasion it was not thought to be a prudent measure by the Madras government, would not, I apprehend, be inconsistent with anything contained in our regulations, or with the practice of our courts. It would, at least, be free from any objection of interfering with existing rights.

36. But with regard to the great bulk of the slave population, and especially the Madras agrestic slaves, who have not been free born, and sold by parents, is it not much too late to denounce as scandalous and suicidal the usages which existed long before our connexion with India, and of which the British Government made no exception in pledging itself to maintain the ancient usages of the country, those usages of slavery which have been particularly regulated by Acts of the Legislature, recognised in proclamations of Government, enforced by decrees of courts, and proceedings of every grade of public officers, from the first dawning of our power down to the present day. What would the native community think of the consistency of the moral feelings, to the promptings of which the English nation had, as far as they could judge, become so suddenly alive? How can they calculate in future that the transactions in which they engage, and the speculations in which they embark, however recognised by proceedings of Government, by laws and by courts of justice, may not be suddenly reprobated and annulled? And if disinterested persons may be dissatisfied with these violent changes in a land where all changes are repugnant to national feelings, what must be expected from those who, as Captain Le Hardy informs us, with reference to a much less violent measure, "would no doubt regard any change of what had hitherto been customary as an encouragement to insubordination amongst their slaves, and as leading to innovations which, in their opinion, could not fail in the end to cause the utter ruin of their families?"

37. I conceive that it must greatly aggravate discontent if it should appear that this important measure of the abolition of slavery were based on a perverted declaration of the law pronounced by a high judicial tribunal. For I conceive that a confidence in the courts of justice of a nation is a more secure tie on the allegiance of a people even than the mildness and wisdom of the executive government. I propose, then, to conclude this Minute with an inquiry into the statements of law and fact contained in the recent Madras futwa, of the date of the 10th of February 1841, and a notice of a still more recent reference from the judges of the Madras Sudder Court, which appears to me at direct variance with that futwa.

38. The substance of the futwa is to this effect, viz. that a true slave is a person who may have been acquired by way of booty in a Mussulman war, "and that a dher slave (in the particular instance) and also the slaves of this country of any other caste, or received from their parents during famine, or at other times," that no such slaves are "true slaves," and that consequently, under the Mahomedan law, the slaves of the Madras presidency cannot be sold and purchased, they may go without permission when and where they please; for such liabilities and restrictions are applicable only to true slaves, as defined by the Mahomedan law.

39. The first matter for consideration is whether the lawfulness of the status of slavery in this country among Hindoos is a question fit to be determined by a reference to the Mahomedan law officers? It is obviously not an ordinary question of Mahomedan law, the Mahomedan code relating merely to the rights and obligations of Mahomedans; neither is it the more difficult question of the recognition of the Hindoo law of status by the Mahomedan conquerors, though even this view of the subject is not canvassed in the futwa, or by the Madras court. But the question depends on the nature and effect of the application of the Mahomedan criminal law to the circumstances of Hindoos by the British Government; did the British Government, in applying the Mahomedan criminal law to Hindoos, destroy for all purposes of criminal law the Hindoo status of slavery, marriage, fraternity, and other civil relations? What say the original Acts of the British Government upon the subject? What the constant usage? What the decrees of courts of justice? What the most solemn official transactions?

40. This question is fully considered by the Law Commissioners in their

First Report (pp. 5 and 6). They came to an unanimous and unhesitating conclusion, that the Indian criminal courts are bound to recognise as a "true slave" whoever is a slave by the Hindoo, as distinguished from the Mahomedan law, and to deal with a Hindoo slave (being such by the custom of the country and not taken in war), just in the same way as they would deal with a "true slave" under the Mahomedan law.

41. The determination of such a question appears to be peculiarly within the province of the Law Commission; but it is no new opinion taken up by the Law Commission, for in the year 1820 the Madras Foujdary Udalut and their law officers, with express reference to the churma slaves of Malabar, issued a circular, defining by legal limits the rights of masters over their slaves, which circular was intended to serve as a rule for the guidance of all criminal courts and magistrates. The circular declares, that under the Mahomedan criminal law (as it must be applied to Hindoos) a master is justified in inflicting correction on his slave for acts by which tazeer is incurred; but that a master is not justified in punishing his slave except it be for such acts, and when a master does punish his slave for them, the punishment must not exceed the lawful extent of tazeer.

42. Ten years after the promulgation of this circular the judges of the court of Foujdary Adawlut, speaking with reference to the customary slaves of the country, and not to "true slaves" by the Mahomedan law, state that they do not think the correction which a master can legally inflict upon a slave could be defined with greater precision than is done by the circular of 1820. This confirmation of the opinion of the judges of the Foujdary Court in 1820, by the judges of that court in 1831, appears to have satisfied the Madras Government.

43. So late as 1839 the judges of the Foujdary Adawlut, for the third time, point out the circular of 1820 as laying down an uniform course of procedure, "and as furnishing a general rule for ascertaining the occasions and the degree of punishment which a master may inflict on his Hindoo customary (not a 'true') slave."

44. This rule, three times laid down by the highest judicial functionaries, recognised by the Madras government, judged to be correct, after much deliberation, unanimously by the Law Commission, has been practically applied by subordinate functionaries. Indeed, after a rule had been circulated with such deliberation and anxiety by the highest criminal court of the presidency, any deviation from it by a subordinate functionary would appear to be a breach of duty. In p. 451, No. 9 of the Appendix to the Report, a judgment is stated which was passed by a Mahomedan criminal judge in a case apparently of the same nature with that in the futwa under consideration. The case occurred in the same district, Canara; the slaves were most probably dhers, but certainly not Mahomedans, and the master was a Hindoo. The obligation on the part of the slaves to reside with their master was determined upon the simple issue, whether the fugitives were the descendants of the masters' slaves. Upon this issue it was determined that the fugitives were bound to live with the alleged master.

45. Though in Madras the cases of Hindoo slavery occur in a thousand-fold proportion to that which is found within the Bengal presidency, yet it may not be immaterial to notice in what manner the Bengal courts have considered the application of the Mahomedan criminal law to the Hindoo law of status. In a case referred by a magistrate to the Nizamut Adawlut at Calcutta (Report, pp. 184, 185), in which the point at issue was the power of a master of slaves to sell them, against their will, to another person whose intention it was to separate them by sending them to different parts of the country. The parties were respectively Hindoos. Now it is to be particularly observed, that the Nizamut Adawlut called upon their pundits for an exposition of the Hindoo law, and they furnished the magistrate with instructions for his guidance, founded upon that law, and not upon the Mahomedan law. Hence it is quite clear that the highest court of the Bengal presidency regards the Mahomedan criminal law as not changing the Hindoo law of status. This appears more pointedly from the circumstance, that in the case of Mahomedan masters the Nizamut Adawlut decides the matter according to the definition of a "true slave" by the Mahomedan law. It may be further remarked, that although it may possibly be found that in the Calcutta courts claims founded upon the Hindoo slavery have frequently been

been unsuccessful, yet if they have been decided against masters upon points of Hindoo law, such decisions are at direct variance with the late Madras futwa; and it is only necessary to look beyond the mere surface of words to be satisfied that no Bengal futwa or decision gives any countenance to the late futwa from Madras.

46. And here it is proper to remark, that the futwa under the consideration, in its definition of a "true slave" according to the Mahomedan law, differs from the interpretation given by the law officers of the Calcutta Nizamut Adawlut. The futwa admits as "true slaves" only such as have been acquired by booty in a Mahomedan war. The Calcutta law officers, not without a considerable tightening, as would appear from Mr. Sutherland's notes, of the Mahomedan law, do not restrict the definition of "true slaves" under the Mahomedan law, so as to exclude the "descendants of captives." The difference, however, between the two courts is of little practical importance, because by the Calcutta practice, which is inconsistent with the mode of proving other ancient facts both in the Indian courts in other cases, and by the courts of most civilised countries in all cases, masters are called upon to prove the fact of a capture in war by direct evidence, which of course is, in every instance, impossible.

47. But the great practical difference between the Calcutta and Madras futwas, and a most important one it is, both as regards the nature and the very great extent of its effects, comes to this: the Calcutta courts have endeavoured to abolish Mahomedan slavery, as far as this can be accomplished by a judicial decree. The Madras court, if the futwa under consideration be adopted, will in like manner attempt to abolish Hindoo slavery.

48. The futwa, moreover, appears to contain assumptions of fact which require particular observation. The futwa contains a very important allegation, that the dher and other slaves of the Madras presidency have been sold into slavery by their parents. This allegation is matter of fact, and not of opinion, unless the uniform statements of all classes of functionaries in all parts of the Madras presidency betray, as to this point, nothing but ignorance and misrepresentation, the alleged origin of Madras slavery in the futwa is most erroneous. I do not conceive that any doubt can be entertained that the great mass of Madras slaves are not free-born and purchased from their parents, but that they are the descendants of slaves, the origin of whose servitude dates long before the Mahomedan conquests, and is co-extensive with the earliest annals and traditions of the country. (*See* as to the Tamil Country, 193 *et seq.*, as to Malabar, 207 *et seq.*, Canara, 231. 234. 236, &c.)

49. Neither can there be any question that, under the Madras presidency, slaves, not being "true slaves" in the sense of the futwa, have been sold and transferred by their masters in a variety of ways generally and immemorially, and that such transactions have been confirmed by numerous decrees of courts, is placed beyond doubt by a host of incontrovertible authorities. (*See* App. 1–9.)

50. It is material to observe, that several authorities mention that the courts do not afford less protection to slaves than to free persons; whereas by the context it plainly appears, that what is meant by such expression is, that, for example, if a slave were to complain of immoderate correction by his master, the magistrate would make no difference between slave and master in ascertaining and enforcing their respective rights, not that the magistrate would hold the law made no distinction in the nature of those rights. The strongest instance of dictum in favour of the master not being justified by the relation of slavery in acts towards his slave which would not be justifiable towards freemen, is that of the magistrate of Malabar; but supposing his testimony is unequivocally to this effect, and that he may have acted insubordinately to the pointed directions of the Sudder Court of his presidency, yet it is clear such has not been the general practice of his own district. (*See* Rep. 219 to 222.) The assistant judge of Malabar (App. 450) recognises the sale, lease, mortgage, and moderate correction of slaves under the Hindoo law and custom of the country, not being "true slaves" by the Mahomedan law. The provincial court of Malabar (App. 446) states that "the right to sell, mortgage, and lease slaves according to the ancient usage of the country has never been disputed or doubted."

51. It was in this very district of Malabar that the cases arose which occasioned the circular of 1820, which is quite inconsistent with the notion that a master may not justify treatment of a slave which he could not legally use towards

towards a freeman. This circular, moreover, is referred to by the criminal judge of this very district, in the same Report in which that judge says that no distinction is recognised between a freeman and a slave; from which it appears that the judge was not speaking of that particular distinction which is manifestly pointed out in the circular.

52. Whatever may have been the recent practice in Malabar in the solitary instance of a particular magistrate in Canara, the district to which the futwa more particularly relates, the right of slaveowners to inflict punishment has always been admitted (App. 9, p. 441. 447; Rep. p. 242); and it appears to have been the practice (Rep. p. 238) for magistrates in Canara to restore fugitive slaves to their masters, whom they had quitted from any other cause than to escape violence or oppression. Agreeably to this practice is the order of the Mahomedan Canara judge already noticed.

53. It follows from the preceding remarks, that the futwa under consideration would seem to be inconsistent with the Mahomedan law, as declared by the Nizamut Adawlut of Bengal; inconsistent with the due application of the Mahomedan law, as declared by the Law Commissioners, and as admitted by the practice of the Bengal Nizamut Court; inconsistent with the order which has been the standing rule for the guidance of all courts and magistrates within the Madras presidency for 20 years, and which, during those 20 years, has been on several occasions expressly recognised by the Foujdary Court and by the government; inconsistent with the real facts as to the origin of Hindoo slavery within the Madras presidency, and inconsistent with the immemorial usages of the country, which government is solemnly pledged to leave inviolate; and it is to be observed, that the usages here spoken of do not relate to matters which might be obscure from their rare occurrence, but these dhers upon whose status the futwa adjudicates, amount in number from 30,000 to 50,000; and in Canara only the number of slaves, not being "true slaves" according to the definition of the Mahomedan law, is estimated at 82,000, Canara being only one of the three great slave districts of the Madras presidency.

54. Since the receipt of the recent futwa from Madras, and since the dates of the first two Minutes, an extraordinary order has been received, under date of 17th May 1841, from the very same court that gave its sanction to the futwa of 1811, which has been considered. It appears to me to be totally inconsistent with the futwa, and totally in subversion of it. The order of the Madras Sudder Court alluded to, directs the magistrate to proceed to sell churma slaves in execution of decrees according to the usages of the country. Now these churmas are obviously not "true slaves" by the Mahomedan law, and therefore, according to the terms of the futwa, cannot "be sold or transferred;" but further, under the futwa, it is the fault of the churmas themselves if they are sold; and after a sale it is again optional with them to give any effect to the sale or not; for if they go away when and where they please, Government has prohibited its own officers from restoring slaves to their masters; an action in the civil court is practically and perhaps theoretically of no use, and according to the futwa, the churma, not being a Mahomedan "true slave," it would be a criminal offence in his alleged master (according to the Mahomedan law, which the futwa and the court pronounce applicable) to use any force whatever for the purpose of preventing him from running away, or for that of bringing him back.

55. It is very singular that, with reference to the last-mentioned order, the Sudder Court refers to their letter, addressed to the Law Commission under date of 10th September 1836, and give us a copy of that communication. Now, in this communication it is expressly stated that in the civil courts "the law recognised in Malabar is that of the country, which, though founded on the Hindoo law, is appealed to both by Hindoos and Mahomedans, and regulates all questions of property, whether real, personal, or in slaves." And again, "Hindoos in this district possess no other description of slaves but such as have been born from parents who are slaves of caste, and these the Mahomedan law would recognise to be in a state of slavery, and the three conditions under which persons become slaves among Mahomedans are common to the Hindoo caste." It is obvious that the matter of fact as to the origin of Hindoo slavery, as here stated, is quite contrary to the origin assigned in the futwa; viz. "And as regards the slaves of this country, whether they are of dher or paria caste, or of any other caste, the people receive them from their parents either during famine or at other times."

times." Moreover, the existence of legal slaves under the ancient laws and usages of the country, and the recognition of such slaves by the Mahomedan law, is in this document distinctly admitted.

(signed) *A. Amos.*

MINUTE by the Right honourable the Governor-general of *India* in Council; dated the 27th August 1841.

Legis. Cons. 6 Sept. 1841. No. 16.

Slavery.

I DO not find it necessary to write at length upon the Minutes which have been recorded in Council on the subject of the abolition of slavery, but I would yet say a few words in explanation of the views which I expressed in my former paper, and to which I still generally adhere.

2. The whole scope of my views upon this question has been, that it would be best to allow sound principles of administration gradually to extend themselves, as they have, in fact, been already very widely extended, without the direct interference of government; but that, should the authorities in England consider legislation to be proper, it should be confined to the declaration of such rules as I consider the evidence to have established to be nearly universally prevalent, namely, that magistrates shall not interfere for the return of persons claimed as slaves to masters, and that they shall admit no distinctions, in cases brought before them, founded on the relation between master and slave.

3. Mr. Amos is of opinion that magistrates do not now interfere for the return of persons claimed as slaves; but he believes that a power of moderate coercion and restraint is admitted in masters to a much greater degree than I had collected from the evidence to be the case at this time.

4. In support of my own impression upon this point of difference, I can only refer to the mass of evidence, as set forth by the Law Commissioners, which I have examined with great care; but even were the admission of a power in the masters, which Mr. Amos appears to affirm to be not of the very local and partial kind which I suppose it to be, it is yet unquestionable that, throughout extensive provinces, no such admission on the part of our judicial tribunals can be alleged; and it certainly seems to me, that to speak generally of the legal admission of any power of punishment in the master as a mere "continuance of an existing power, would be to give a very incorrect representation of the fact," as I believe it both really to be and as it stands upon the evidence; and if I am right in this, the necessity of extreme caution in legislation becomes the more manifest; for surely, if we legislate at all, we can only legislate in favour of the slave; we cannot in any quarter curtail or recall a protection to the slave which we find to be established by recognised judicial practice.

5. I must repeat my former opinion, that with our very imperfect police and remotely scattered magistrates, it would not be safe to commit a power of punishment to masters; and I would add that a power which does not extend beyond that of such moderate coercion as that which Mr. Amos would not acknowledge, can in truth be of very little value. Servants and labourers are easily controlled, without the possession of such authority by their employers, and so doubtless would those classes who are in this country comprehended under the designation of slaves.

6. Supposing legislation to be directed from England, I would for the present confine it strictly to such a declaration as shall give certainty and uniformity to the administration of the law, which I believe to be most generally, though not quite invariably, enforced. If by this means the process of the entire extinction of a slavery recognised by our laws shall be accelerated, it must, I feel, be to all of us a subject of sincere congratulation; but beyond the declaration of (which is already in practice) the law generally, I do not think it wise or necessary that the government should yet proceed. It is well that in great objects of this nature the course of the government should be measured and progressive, although so guided as never to counter-work the end at which we aim; we may otherwise incur a serious hazard of raising very mistaken apprehensions, and fostering wholly unfounded claims. No just claim for compensation could, for instance, be made by masters, simply because the state of our criminal law is made clear and certain; although this might not unnaturally work upon themselves as grievously injured, if they were to be suddenly told that our courts would no longer

(C.) No. I.
Papers on Slavery in India.

recognise even the name of slavery. When the really slight and valueless nature of their tenure over their so called slaves becomes perfectly understood by masters and by all public officers in all parts of India, the open extinction of slavery as a status in any manner admitted by our laws may be expected to be received without discontent and resistance.

(signed) *Auckland.*

(C.) No. II.
Examination of Absent Witnesses.

—(C.) No. II.—

ON THE EXAMINATION OF ABSENT WITNESSES.

(No. 5.)

Legis. Cons. 22 Feb. 1841. No. 2.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Depart.

I AM directed by the Right honourable the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government the accompanying correspondence*, which has reference to the subject of Act XXIII. of the current year.

2. You will be good enough to return the documents now submitted.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
29 December 1840.

(No 616.)

Legis. Cons. 22 Feb. 1841. No. 3. Enclosure.

From *D. M'Farlan*, Esq. Chief Magistrate, Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

IN continuation of my letters of 3d May 1838, 23d November 1839, and 24th August 1840, on the subject of process that passes between the Calcutta police-office and the mofussil courts, I have now the honour to transmit two statements, with the view, first, of informing government of the ordinary course of affairs, and, second, of a remedy which may be provided if government think fit.

2. There are, in addition to these, frequent anomalous cases of the taking of evidence before me in criminal cases hanging in the mofussil.

3. A mofussil court caused me to take the evidence of the secretary to the Bank of Bengal, to prove a forgery of a note of that bank.

4. I take frequent evidence in civil cases. The most curious is that of a warrant from the Supreme Court of the Commonwealth of Massachussets. The gentlemen whom I have examined are above suspicion, but if they have perjured themselves I do not know who could punish them.

5. A suit for petty assault is generally criminal, and involves a forfeiture of 10 rupees. A suit for the inheritance of the Burdwan Raj is civil, and involves the loss or gain of 50 lacs of rupees per annum; any distinction in the propriety of taking evidence in the one case or the other, founded on the technical definition of civil and criminal, seems needless.

I have, &c.
(signed) *D. M'Farlan*,
Chief Magistrate.

Calcutta Police-office,
26 October 1840.

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* Criminal Proceedings, 15th December 1840, Nos. 20 and 24.
Letter from Register Sudder Dewanny Adawlut, No. 4281, of the 18th instant.

(C.) No. II.
Examination of Absent Witnesses.

STATEMENT of the Number of Notices, Proclamations, Summonses, Subpœnas, Dustuk or Warrants of the Dewanny and Foujdary Adawluts, sent by the hands of Peons from the Mofussil into the Town, commencing the 1st of January and ending on the 31st of August last.

1840.	Ittallanamabs, or Notifications of the Zillah Civil Courts.	Hookumnamabs, or Orders of the Zillah Civil Courts.	Subpœnas.	Dustuk, or Warrants of Sums decreed in the Zillah Civil Courts.	Ishtchar, or Proclamations of the Zillah Civil Courts.	Summonses and Subpœnas from the Zillah Foujdary Adawlut.	Total.
January	21	4	13	-	4	12	54
February	25	3	15	-	5	4	52
March	8	-	5	1	2	8	24
April	20	-	20	5	7	6	58
May	20	3	12	4	5	4	48
June	30	-	13	6	9	1	59
July	23	-	18	4	5	13	63
August	28	-	7	1	7	10	53
	175	10	103	21	44	58	411
					Average per Month		51

Calcutta Police-office, 26 Oct. 1840.

(signed) *D. M'Farlan*, Chief Magistrate.

STATEMENT of the Number of Roobacarries and Perwannahs or Warrants for Apprehension of accused Persons sent from the Interior by Dawk into *Calcutta*, and the Number of Sundry Civil Processes, commencing from the 1st of January and ending on the 31st August last.

1840.	Roobacarries from the Zillah Foujdary Adawlut for Apprehension of accused Parties, sent by Dawk.	Roobacarries from the Superintendents of the Camp of Barrackpore and Dum Dum, for the Attendance of Accused Parties, by Dawk.	Roobacarries from the Collector's Cutcherry regarding Defalcations, by Dawk.	Miscellaneous Roobacarries and Perwannahs of the Foujdary Adawlut, to make Inquiries in the Town of Calcutta, in cases pending in the Mofussil, to examine Securities tendered in the Mofussil, and to collect Fines imposed, by Dawk.	Roobacarries from Zillah Civil Suits, forwarding Questions to be put to Witnesses in Calcutta, by Dawk.	Total.
January	10	1	1	7	6	25
February	10	2	2	25	2	41
March	7	-	-	14	-	21
April	5	-	-	10	5	20
May	10	-	-	12	4	26
June	8	-	-	23	5	36
July	7	-	1	16	8	32
August	10	-	-	10	3	23
	67	3	4	117	33	224
				Average per Month		28

Calcutta Police-office, 26 Oct. 1840.

(signed) *D. M'Farlan*, Chief Magistrate.

(C.) No. II.
Examination of Absent Witnesses.

(No. 623.)

From *D. M'Farlan*, Esq. Chief Magistrate, Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

I FIND, on closer examination, that the criminal cases in which evidence has been taken by me for the mofussil court (by commission, as it may be called), amount from January to August last to eight, an abstract of which is inserted below. They were not included in the statements transmitted with my letter No. 616, of the 26 October last. They are all for the defence.

ZILLAH REQUIRING EVIDENCE.	KIND OF EVIDENCE.
1/ Midnapore - -	Proof that certain property was honestly come by in Calcutta.
2/ ditto - - -	Evidence of medical treatment in Calcutta.
3/ ditto - - -	- - (Goomsoodee) or disappearance in the mofussil; proof that the party was in Calcutta.
4/ ditto - - -	Ditto - of another party.
5/ Poorneah - -	Proof that defendant was in Calcutta at a given time.
6/ Furreedpore - -	Ditto - was in Calcutta during the time of an affray at the Zillah.
7/ Sarun - - -	- - Proof that a man was in the police of Calcutta during the time of an affray.
8/ Serampore - -	Evidence of a witness to the searching of a house.

Calcutta Police-office, 2 Nov. 1840.

I have, &c.
(signed) *D. M'Farlan*,
Chief Magistrate.

(No. 1720.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to the Register Sudder Dewanny and Nizamut Adawlut.

Sir,

Judicial: Criminal. No. 616 of the 26th October. No. 623 of the 2d November.

I AM directed by the Right honourable the Governor of Bengal to request that you will lay before the Court the two accompanying original letters from the chief magistrate of Calcutta, regarding requisitions made to him by mofussil authorities for execution of legal processes within the jurisdiction of Her Majesty's Court, with a request on the part of his Lordship that measures may be adopted for the correction of such irregularities as those mentioned by the chief magistrate

2. You will be pleased to return the papers now forwarded.

I am, &c.
(signed) *J. H. Young*,
Deputy Secretary to the Government of Bengal.

Fort William, 10 November 1840.

(No. 4281.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smith, Esqrs., Judges. J. F. M. Reed, Esq., Temporary Judge.

WITH reference to Mr. Deputy Secretary Young's letter of the 10th November last, No. 1720, and its enclosures, I am directed by the Court to forward you, for the purpose of being laid before the Right honourable the Governor of Bengal, copy of a circular order this day issued to the mofussil authorities, prohibiting the irregularities alluded to in the communications received from the chief magistrate of Calcutta.

2. The Court, however, are clearly of opinion, with reference to the heavy expenses that will be imposed on parties in conveying their witnesses from the presidency to the different courts situated in the interior, as well as to the hardship that must be undergone by witnesses in being obliged to leave their avocations in Calcutta

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Examination of Absent Witnesses.

Calcutta and to proceed at all seasons of the year to any part of these territories, that the provisions of

Section 6, Regulation IV. 1793;
Section 9, Regulation XIII. 1808;
Section 11, Regulation XXVI. 1814; and
Section 11, Regulation XIX. 1817,

should be extended to all persons residing in Calcutta, whose evidence may be required in any of the Company's courts, so that the chief magistrate of Calcutta, or some other duly qualified officers, should be authorized to examine such witnesses on written interrogatories, as appears heretofore to have been the practice.

I have, &c.
(signed) *J. Hawkins,*
Register.

Fort William,
18 December 1840.

(Copy.—Circular.)

To the Civil and Session Judges.

S. D. & N. A.

Sirs,

Present: R. H. Rattray, C. Tucker, E. Lee Warner, D. C. Smith, Esqrs., Judges; and J. F. M. Reed, Esq., Temporary Judge.

The Right honourable the Governor of Bengal has lately forwarded to the Court two original letters from the chief magistrate of Calcutta, regarding certain irregular requisitions made by the mofussil authorities to that officer, for the purpose of obtaining the evidence of witnesses residing in Calcutta, in cases that appear to have been pending in the Company's courts.

2. Section 4, Act XXIII. of 1840, indicates the manner in which subpœnas issued by the mofussil authorities may now be executed within the local limits of Her Majesty's courts, and you are therefore directed to refrain from sending any requisitions to the chief magistrate of Calcutta, in any civil or criminal proceedings, for the purpose of obtaining the evidence of witnesses residing in Calcutta.

3. The Court request that you will be careful that every subpœna, writ, warrant, or other process required to be endorsed under the authority of this Act, be drawn up in strict conformity with the Regulations of Government, in order that the same may not be remitted to you for amendment.

4. You will furnish the magistrate with a copy of this letter, and you will communicate the contents to the principal sudder ameen, and sudder ameen of your district.

I have, &c.
J. Hawkins, Register.

(True copy.)
(signed) *J. Hawkins,* Register.

Minute by the Honourable *A. Amos,* Esq., dated 9 February 1841.

Legis. Cons. 22 Feb. 1841. No. 4.

I circulate a draft Act for the examination of absent witnesses, in consequence principally of the suggestion of the Sudder Court that such an Act is necessary, and finding also that it is wanted for the supreme courts.

The suggestion of the Sudder Court applied only to the taking of examinations in the presidency towns for the use of the mofussil courts; but on conference with one of the judges of the Sudder, it appeared to him that the recent provisions of the English statute law contained several material improvements on the Bengal Regulations. It appears to me that if this draft should be favourably received after publication, it will be a considerable and important step towards a uniform and improved code of procedure for all the courts in all the presidencies. Sir E. Ryan, Sir H. Seton, and Mr. Smyth of the Sudder, think the present draft satisfactory.

Among the alterations of the present system, it may be noticed that the examinations which will be taken in the supreme courts are now only procurable by a bill in equity, and that the procuring of evidence in the states of allied princes has long been a desideratum which has been much felt in courts of justice.

As this Act will fill an important place in any code of procedure, it might be useful, and I think it would be agreeable to the Law Commissioners, if the printed published draft were sent to them, together with an intimation that if any

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modifications or additions should occur to them within the three months, Government hope to be favoured with their suggestions, but that otherwise Government does not wish to divert their attention from other matters to preparing any special report on this subject.

(signed) *A. Amos.*

AN ACT for a more uniform and an improved Process for taking the Examination of Absent Witnesses.

Legis. Cons. 22 Feb. 1841. No. 5. Enclosure.

1. IT is hereby enacted that all Regulations, and parts of Regulations, for taking the examinations of absent witnesses in any presidency are hereby repealed.

2. And it is hereby enacted, that it shall be lawful for any court within the territories under the government of the East India Company, and the several judges thereof, in every suit depending in such court, upon the application of any of the parties to such suit, to order the examination upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the suit shall be depending, or to order a commission to issue for the examination of witnesses at any place or places out of such jurisdiction upon interrogatories or otherwise, and by the same or any subsequent order or orders, to give all such directions touching time, place, and manner of such examination, as well within the jurisdiction of the court wherein the suit shall be depending as without, and all other matters and circumstances connected with such examinations, as may appear reasonable and just.

3. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the court wherein the suit shall be depending, by the authority of this Act, it shall be lawful for the Court, or any judge thereof, in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any such person to be at his own place of residence, or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers, and the wilful disobedience to any such order shall be deemed a contempt of court; provided always, that every person whose attendance shall be so required shall be entitled to the like payment for expenses and loss of time as upon attendance at a trial.

4. And it is hereby enacted, that it shall be lawful for all and every person authorized to take the examination of witnesses by any order or commission issued in pursuance of this Act, and he and they are hereby authorized and required to take all such examinations upon oath or affirmation, where an affirmation is admissible or required upon a trial; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury.

5. And it is hereby enacted that no examination or deposition to be taken by virtue of this Act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the court that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable from permanent sickness or other permanent infirmity to attend the trial, or distant without collusion more than 50 coss from the place of trial, or is exempted by any law or Regulation from personal appearance in court, in all or any of which cases the examinations and depositions, duly certified, may at the discretion of the court, without proof of the signature to such certificate, be received and read in evidence.

6. And it is hereby enacted, that any court other than one of Her Majesty's courts, or any judge thereof, may issue such commission as aforesaid, and such orders as are indicated in the second section of this Act, to be executed within the local limits of the jurisdiction of any of Her Majesty's courts, and every such commission required to be so executed, and all orders made touching the same shall, before being executed, be submitted to a judge of that court of Her Majesty within local limits of which it is intended that the commission shall be executed, and it shall be lawful for such judge of Her Majesty's court to subscribe at his discretion any such commission or order, after which the wilful disobedience to any such order shall be deemed a contempt of Her Majesty's court.

7. And

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7. And it is hereby enacted, that such commissions and orders as aforesaid may be issued for execution under this Act, within the territories of princes and states in alliance with the East India Company, and all persons within such last mentioned territories, being in the service of the East India Company, are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the court or judge issuing any such commission or order, be punishable in like manner as if such offence had been committed within such jurisdiction, and for giving false testimony under the same shall be punishable by any court of justice within the territories of the East India Company.

8. And it is hereby enacted, that whenever the evidence of any absent witness shall be required for the purposes of any of the Honourable Company's courts, the commission for examining such witness may be directed to any judge of any other of such courts, who may be required to take such examination in open court or otherwise, and in every such case the judge to whom any such commission shall be directed, shall be authorized to punish as for a contempt of court the neglect or refusal of any witness to obey the order for the examination required by such commission.

Fort William, Legislative Department, dated 22 February 1841.

Legis. Cons. 22 Feb. 1841. No. 6.

The following Draft of a proposed Act was read in Council for the first time on the 22d February 1841.

ACT No. —— of 1841.

An Act for a more uniform and an improved Process for taking the Examination of Absent Witnesses.

I. It is hereby enacted, that all Regulations and parts of Regulations for taking the examinations of absent witnesses in any presidency are hereby repealed.

II. And it is hereby enacted, that it shall be lawful for any court within the territories under the government of the East India Company and the several judges thereof, in every suit, depending in such court, upon the application of any of the parties to such suit, to order the examination upon interrogatories or otherwise before any officer of any such court or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the suit shall be depending, or to order a commission to issue for the examination of witnesses at any place or places out of such jurisdiction, upon interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions touching time, place and manner of such examination, as well within the jurisdiction of the court wherein the suit shall be depending as without, and all other matters and circumstances connected with such examinations as may appear reasonable and just.

III. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the court wherein the suit shall be depending, by the authority of this Act, it shall be lawful for the court or any judge thereof in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any such person to be at his own place of residence or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers, and the wilful disobedience to any such order shall be deemed a contempt of court: provided always, that every person whose attendance shall be so required shall be entitled to the like payment for expenses and loss of time as upon attendance at a trial.

IV. And it is hereby enacted, that it shall be lawful for all and every person authorised to take the examination of witnesses by any order or commission issued in pursuance of this Act, and he and they are hereby authorized and required to take all such examinations upon oath or affirmation where an affirmation is admissible or required upon a trial, and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury.

V. And it is hereby enacted, that no examination or deposition to be taken by virtue of this Act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction

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faction of the court that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable from permanent sickness or other permanent infirmity to attend the trial, or distant without collusion more than 50 coss from the place of trial, or is exempted by any law or Regulation from personal appearance in court, in all or any of which cases the examinations and depositions duly certified may, at the discretion of the court, without proof of the signature to such certificate, be received and read in evidence.

VI. And it is hereby enacted, that any court other than one of Her Majesty's courts, or any judge thereof, may issue commission as aforesaid and such orders as are indicated in the second section of this Act, to be executed within the local limits of the jurisdiction of any of Her Majesty's courts, and every such commission required to be so executed, and all orders made touching the same shall, before being executed, be submitted to a judge of that court of Her Majesty within the local limits of which it is intended that the commission shall be executed, and it shall be lawful for such judge of Her Majesty's court to subscribe, at his discretion, any such commission or order, after which the wilful disobedience to any such commission or order shall be deemed a contempt of Her Majesty's court.

VII. And it is hereby enacted, that such commissions and orders as aforesaid may be issued for execution under this Act within the territories of princes and states in alliance with the East India Company, and all persons within such last-mentioned territories, being in the service of the East India Company, are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the court or judge issuing any such commission or order, be punishable in like manner as if such offence had been committed within such jurisdiction, and for giving false testimony under the same shall be punishable by any court of justice within the territories of the East India Company.

VIII. And it is hereby enacted, that whenever the evidence of any absent witness shall be required for the purposes of any of the Honourable Company's courts, the commission for examining such witness may be directed to any judge of any other of such courts, who may be required to take such examination in open court or otherwise. And in every such case the judge to whom any such commission shall be directed shall be authorised to punish as for a contempt of court the neglect or refusal of any witness to obey the order for the examination required by such commission.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 22d day of May next.

T. H. Maddock,
Secretary to Government of India.

(No. 27.)

Legis. Cons. 22 February 1841. No. 7.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Legislative.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 5, dated the 29th December last, with its enclosures, and in reply to transmit to you, for submission to the Right honourable the Governor of Bengal, the accompanying draft of a proposed Act for a more uniform and improved process for taking the examination of absent witnesses founded, thereon.

2. The original enclosures of your letter are returned herewith.

I have, &c.

Council Chamber,
22 February 1841.

(signed) *T. H. Maddock,*
Secretary to the Government of India.

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(No. 28.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 22 February 1841. No. 8. Legislative.

Sir,

In transmitting to you, for submission to the Indian Law Commissioners, the accompanying copy of a proposed draft Act for a more uniform and improved process for taking the examination of absent witnesses, I am directed by the Governor-general in Council to request, that if in respect to it any modifications or additions should occur to the Commissioners, they may be communicated to me for the information of the Supreme Government before the expiration of the three months, after which the draft is ordered for reconsideration.

2. The papers upon which the draft Act is founded are also enclosed for the information of the Commissioners.

I have, &c.
(signed) *T. H. Maddock*,
Secretary to the Government of India.

Council Chamber,
22 February 1841.

To the Honourable President and Members of the Legislative Council of India.

Legis. Cons. 17 May 1841. No. 26.

The Memorial of the undersigned Inhabitants of the Districts of Vizagapatam, Rajahmundry, &c.

Respectfully showeth,

That your memorialists have observed the draft of an Act published under date the 22d February 1841, entitled, "An Act for a more uniform and an improved Process for taking the Examination of 'Absent Witnesses;'" and having duly considered the object and motive of your Council in framing the said Act, respectfully beg to offer a few observations for its more efficient operation.

That the Act under the consideration of your memorialists, among other things, provides in certain cases against the present practice of compelling the witnesses of all ranks (females of distinction excepted) to give their evidences in open courts, a practice materially affecting the convenience and pecuniary considerations of such of the British Indian subjects as are obliged by the extent of their avocations to be constantly engaged with their own concerns.

That your memorialists believe that section 2 of this Act, which authorises a judge to examine witnesses by interrogatories or otherwise, was intended to be availed of by that portion of the witnesses whose rank in society, and necessarily the importance of their employment, might render it inconvenient and troublesome to appear in open court.

That under this conviction, your memorialists beg leave to observe, that this Act, under its present form, leaves the disposal of this privilege at the discretion of the judge, and therefore liable to deviate in point of utility from the intent of your Council for the following reasons:

1st. This privilege cannot be enjoyed by the party it was intended for, unless the judge with whom the power of its disposal is vested happens to be rigidly equitable, so that his private feeling may have no influence whatever over his public career.

2d. As it is not in the power of every judge to be thoroughly acquainted with the several distinctions of the Hindoos, he is necessarily obliged to rely on the statement of his informants, who may themselves be misled or influenced by other motives to misrepresent the facts of the case. In all and every such cases this privilege is liable to be ill bestowed, and even abused. The truth of this statement shall be established on a reference to the enclosed document.

That your memorialists, under these considerations, humbly beg to suggest the propriety of introducing a provision to guard against the above defect, which can, in their humble opinion, be effected by adopting a method similar to that pursued in selecting the grand juries at the three presidencies, or that of bestowing

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the title of esquire in England, in defining that class of persons who are eligible to avail themselves of the benefits of this Act.

Your memorialists respectfully solicit that your Council will be pleased to amend the Act, so as to leave little grounds for the perversion of the import of this desirable enactment.

And your memorialists will ever pray.

(signed) *Goday Soorai Narrain Row,*
Proprietor of the Estates Sharoomahamed Poorum Boopuly Razanaram and Nackapelly, in the Vizagapatam District.

20 April 1841.

Legis. Cons. 17 May 1841. No. 27. Enclosure.

EXTRACT from the Proceedings of the Provincial Court of Appeal for the Northern Division, dated 16 April 1832.

(E. P. No. 169 of 1832.)

Goday Sooreeannarainrydoo Petitioner.

READ Extra Petition, No. 169 of 1832, from the pleader C. Boochiah, on behalf of Goday Sooreeannarainroydoo, complaining that the acting zillah judge of Chicacol refused to allow him to sit on a chair during his examination before that court as a witness for the plaintiff in O. S. No. 11, of 1827, of this court's file, although he was informed by the government vakeel that a chair was always allowed him by the former zillah judges whenever the petitioner had to appear before the court, in consideration of his being a proprietor, a soucar, and of high respectability, and praying that a precept may be issued to the zillah judge of Chicacole, in the event of his attendance being required hereafter before the court, to allow him a chair, and to receive his evidence sitting, and also that certified copies of this petition, and of the proceedings thereon, may be granted to him on stamped papers which will be furnished by him.

Ordered, that a copy of the petition be sent to the zillah judge of Chicacole, and that he be informed that the usual practice in the court of Chicacole of giving a chair to zemindars, respectable ratchawars, and proprietors when giving their evidence, seems consistent with the orders of Government, dated 23d February 1827, and that it should not be deviated from in the case of Narrainrow, who is a very extensive proprietor, and who, it is understood, has hitherto been allowed the indulgence which he has solicited. Precept returnable within five days after its receipt.

Ordered, that the copies prayed for be granted.

(True extract.)

(signed) *D. Bannerman,*
Acting Judge for the Regr.

Legis. Cons. 14 June 1841. No. 4.

From the Indian Law Commissioners to the Right Honourable *George*, Earl of *Auckland*, G. C. B., Governor-general of India in Council.

WE have now the honour to report upon the draft of a proposed Act for a more uniform and an improved process for taking the examination of absent witnesses, in compliance with the requisition made to us by Mr. Secretary Maddock's letter of the 22d February last, No. 28.

2d. The branch of procedure to which this draft relates is one that has undergone much discussion in the Commission, with a view to the code now in preparation, and we have agreed upon the general principles on which that part of the code is to be constructed.

3d. We have now the honour to send up the draft Act, with such modifications and additions as were necessary to bring it into accordance with the general principles so agreed upon.

4th. In

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4th. In submitting this modified draft, we beg leave to recall to the attention of your Lordship in Council the letter addressed by our secretary, on the 18th May 1838, to Mr. Officiating Secretary Mangles, in which this subject was considered. We submit this our report for the consideration of your Lordship in Council.

(signed) *A. Amos.* *F. Millett.*
C. H. Cameron. *D. Eliott.*
H. Borradaile.

Indian Law Commission,
22 May 1841.

ACT No. —— of 1841.

AN Act for a more uniform and an improved Process for taking the Examination of Absent Witnesses.

Legis. Cons. 14 June 1841. No. 5. Enclosure.

1. It is hereby enacted, that all Regulations and parts of Regulations for taking the examination of absent witnesses in any presidency are hereby repealed.

2. And it is hereby enacted, that it shall be lawful for any court within the territories under the government of the East India Company, and the several judges thereof, in every civil proceeding depending in such court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the proceeding shall be depending, or to order a commission to issue to any subordinate court for the examination of such witnesses upon interrogatories or otherwise, or to order a commission to issue to any other court for the examination of witnesses at any place or places out of such jurisdiction, upon interrogatories or otherwise, and by the same or any subsequent order or orders, to give all such directions for taking such examinations, as well within the jurisdiction of the court wherein the proceeding shall be depending as without, as may appear reasonable and just; provided always, that any court to whom any such commission shall be directed, shall take the examination in open court in all cases where witnesses are able to attend in court, and are not exempted from attendance by law absolutely, or at the discretion of the court; provided also, that such commissions as aforesaid, for the examination of witnesses out of such jurisdiction, may be directed otherwise than to some court under special circumstances which may appear to the court issuing the commission to render such special direction expedient; provided also, that all commissions issued and orders made by any court of the East India Company, and which are required to be executed within the local limits of any of Her Majesty's supreme courts, shall be directed in manner hereinafter mentioned.

3. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the court wherein any such proceeding as aforesaid shall be depending, by the authority of this Act, it shall be lawful for the court, or any judge thereof, in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any such person to be at his own place of residence, or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers, and the wilful disobedience to any such order shall be deemed a contempt of court, and punishable as in other cases of refusing or neglecting to give testimony; provided always, that every person whose attendance shall be required under this Act, shall be entitled to the like payment for expenses and loss of time as upon attendance in court in cases where such expenses are now allowed.

4. And it is hereby enacted, that it shall be lawful for every court or person authorised to take the examination of witnesses by any order or commission issued in pursuance of this Act, and they are hereby authorised and required to take all such examinations upon oath or affirmation, where an affirmation is admissible or required upon a trial; and if upon such oath or affirmation, any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and every person causing or procuring another person to commit the offence of perjury hereby defined shall be guilty of subornation of perjury.

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5. And it is hereby enacted, that, before any order or commission for the examination of any witness under this Act shall be issued, the court or judge issuing the same shall be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness, or other cause allowed by law (A. A.), and no deposition taken under this Act, except as hereinafter-mentioned, shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant without collusion more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court, or unless the court shall at its discretion dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same, and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the court at its discretion to authorise the reading of the deposition; and all depositions taken under this Act, being duly certified, may be read at the discretion of the court without proof of the signature to such certificate.

6. And it is hereby enacted, that any court, other than one of Her Majesty's courts, or any judge thereof, may issue such commissions as aforesaid, and such orders as are indicated in the second and third sections of this Act, to be executed within the local limits of the jurisdiction of any of Her Majesty's courts; and all such commissions and orders, except when directed otherwise than to a court, shall be directed to a court of requests having jurisdiction within such limits or any part thereof.

7. And it is hereby enacted, that such commissions and orders as aforesaid may be issued for execution under this Act within the territories of princes and states in alliance with the East India Company, and all persons within such last-mentioned territories, being in the service of the East India Company, are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the court or judge issuing any such commission or order, be punishable in like manner as if such offence had been committed within such jurisdiction, and for giving false testimony under the same shall be punishable by any court of justice within the territories of the East India Company.

8. And it is hereby enacted, that whenever the evidence of any absent witness shall be required out of the jurisdiction of the court in which the proceedings for which the evidence is wanted may be pending, and the commission shall be directed to any court, such court may punish the wilful disobedience of any such order as aforesaid as a contempt, notwithstanding it shall not itself have made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony.

9. And it is hereby enacted, that such orders and commissions as aforesaid may be issued, executed, and enforced in manner aforesaid, in any criminal proceeding pending in any court; provided always, that no deposition taken under this Act in the course of any criminal proceeding shall be read in evidence, unless taken in open court, except depositions of witnesses exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases, or unable to attend in court from sickness or infirmity, and that no deposition of any accomplice shall be read in evidence under this Act; provided also, that no capital sentence shall be passed in any case in which the conviction of the accused depends in any degree upon the evidence contained in a deposition taken and read in evidence under this Act; provided also, that under no circumstances, except as hereinafter mentioned, shall any deposition taken under this Act be read in evidence in any criminal proceeding, unless it be proved that the deponent is dead, or is unable from permanent sickness or infirmity to attend to be personally examined, or distant more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases: and whenever a deposition shall be taken under this Act, and the witness shall afterwards be personally examined in court, the deposition shall be read in evidence after the witness shall be so examined.

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Minute by the Honourable *A. Amos*, Esq., dated 8 June 1841.

Legis. Cons. 14 June 1841. No. 6. Absent Witness Act.

Two suggestions were reserved for consideration at our last meeting. 1st. That although it was the intention of the Act that commissions should be always directed to the court nearest to which the witness resided; yet that, in the working of the Act, the commission would, in point of fact, generally be sent to the judge, and not to a moonsiff, although the judge might be distant from the witness, and the moonsiff very near to him. 2dly. That no superior tribunal should take evidence for an inferior tribunal, a principle which the Act itself adopts with regard to the supreme courts, which are not to take evidence for mofussil courts, but the courts of request are to do this business in the presidency towns.

It was the opinion of the Law Commission, that the courts requiring evidence should not be tied down to direct their commissions to any particular courts, for that their discretion in this respect would be exercised with the greatest regard to propriety and convenience in each case, if it were guided by the instructions of the respective sudder courts, instructions which, to be of practical utility, might lead to some prolixity of detail.

As a general rule, it may be proper that the evidence wanted for a court ought to be taken before a court of an equal or inferior degree, but I think that this principle may admit of some qualification. For example, it may happen where a suit is before a moonsiff, that it will be very convenient that a sudder ameen should take the evidence; and where it is before a sudder ameen, that a principal sudder ameen should take the evidence, unless wherever there is a sudder ameen there is also a moonsiff, and wherever there is a principal sudder ameen there is also a sudder ameen; and not only this, but also, unless the inferior officers be not incapacitated, from relationship, interest, or other causes; but cases of this description can be better regulated by instructions from the Sudder Court than by a legislative Act.

I attach a draft clause for effectuating both the objects proposed in the above suggestions, and according to the plan which, it was suggested, would best effectuate them. I sent the clause to Mr. Millett, who has much considered the subject, and has had much experience with reference to it. I attach his answer, which I think contains some important objections to the clause as drafted.

I now propose, in order to meet the views of Mr. Bird and Mr. Prinsep, the following modification of section 5, where I have put a (A. A.): "And before granting any such commission, the court granting the same shall make particular inquiry as to the present residence of the witness whose deposition is to be taken under such commission, and as to the court of the same degree as the court granting such commissions, or of inferior degree to such court, which may be nearest to the place of residence of the witness, and the commission, except in cases of apparent inconvenience, shall be directed accordingly; but no commission shall be held to be void for misdirection on this account." *N.B.* The last words are necessary, otherwise a decree might be set aside upon a point of nice measurement.

I have proposed to turn the 9th section into a separate Act, according to the accompanying draft. It relates to criminal proceedings, which it will be recollected are conducted before a jury in the presidency towns. The judges have not been consulted upon it, and it seems to require publication.

The point which has occupied the Law Commission during several meetings, besides several private minutes, and upon which Sir E. Ryan has been consulted, is a very important one; it is in fact the only material alteration in the draft as sent to the Commission. The point is this, it is thought that a witness may quit Calcutta by a ship before a trial comes on. Under this Act, his deposition is taken forthwith; a few weeks afterwards the trial comes on: 1. Must the person seeking to use the deposition prove, before he can use it, that the witness has actually departed? 2. May he use it unless the opposite party shows that the witness is still within the jurisdiction? 3. May he use it notwithstanding the opposite party shows that the witness is still within the jurisdiction? The draft leaves all three modes discretionary. Sir E. Ryan says he will always insist on the first, and so should I, from a strong sense of the very weak nature of testimony

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not delivered at the time of trial, and from a knowledge that the rules which prohibit hearsay evidence seldom operate by excluding proof of a fact, but much more commonly by inducing persons to take trouble and get the most satisfactory instead of the worst evidence of it. Moreover, at Madras and Bombay, and possibly at Calcutta, it may be very inconvenient if one judge adopts rule No. 1, and another rule No. 2 or No. 3. However, I have yielded to the strong opinion of the mofussil members of the Commission, that rule No. 1 would quite upset the practice of the mofussil courts, whilst Sir E. Ryan says that, with the discretionary power, he shall immediately establish No. 1 as a rule for himself, and so he will raise no objection to the Act. I should have no hesitation in establishing No. 1 for all the supreme courts. But there are great advantages in making this important branch of the law of procedure applicable to all courts, and the Act as at present drafted appears to be the way of accomplishing that object with the least practical inconvenience.

(signed) *A. Amos*

" Provided also, in the case of commissions to be executed by courts, that all such commissions, except those to be executed within any presidency town, shall be directed to a judge (*N. B.* this must fit the three presidencies) having jurisdiction within the district within which the commission is to be executed, and the judge shall, at his discretion, execute the commission in his own court, or direct it to any subordinate court within his district, which shall have the same effect for all the purposes of this Act, as if the commission had in the first instance been directed to such subordinate court."

From *F. Millett*, Esq. to the Honourable *A. Amos*, Esq., dated 7 June 1841.

My dear Amos,

In the case supposed the moonsiff in the 24 Pergunnahs ought to direct his commission to that moonsiff in the Bardwan district within whose jurisdiction the witness resides. It was certainly our intention that he should do so, and I do not see why he should do otherwise. If there is any fear of the moonsiff preferring an inconvenient to a convenient mode of getting the evidence of absent witnesses, a circular order from the Sudder Dewanny would prevent them going wrong.

My objection to directing all commissions intended for other courts to the judge of the zillah or city, is the inconvenience and delay it may occasion.

E. g.: There are many moonsiffs courts at a great distance from the sudder station of the district to which they belong, in a particular direction, the court requiring the evidence will be still further, and the commission might have to travel some 200 miles more than it need to do; such was the case in the district where I was last stationed, viz. Beerbhoom.

The nearest moonsiffs court of the adjoining district of Bhaugulpore was not above 20 miles off my court-house, whilst the station of Bhaugulpore by the post-road was upwards of 200, I believe nearly 250 miles distant. It is better also that the parties in the case should know exactly where the evidence is to be taken, that, if they think proper, they may go themselves, or arrange for some persons being present on their behalf: this they could not so well do if they were uncertain whether the zillah judge, to whom the commission was directed, would take the evidence himself, or transfer the commission to a subordinate court.

I return the proposed proviso in case you may require it.

Yours, &c.

(signed) *F. Millett.*

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Legis. Cons. 14 June 1841. No. 7. Enclosure.

AN ACT for extending the Provisions of Act —— of 1841, entitled, "An Act for a more uniform Process for taking the Examination of Absent Witnesses," to Criminal Proceedings.

(Here copy section 9 of Absent Witness Act, with alterations in pencil.)

IT is hereby enacted, that such orders and commissions for taking the examinations of absent witnesses under Act —— of 1841, may be issued, executed, and enforced in manner provided for by that Act in any criminal proceeding pending in any court; provided always, that no deposition taken under this Act in the course of any criminal proceeding shall be read in evidence, unless taken in open court, except depositions of witnesses exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases, or unable to attend in court from sickness or infirmity, and that no deposition of any accomplice shall be read in evidence under this Act; provided also, that no capital sentence shall be passed in any case in which the conviction of the accused depends in any degree upon the evidence contained in a deposition taken and read in evidence under this Act; provided also, that under no circumstances, except as hereinafter mentioned, shall any deposition taken under this Act be read in evidence in any criminal proceeding, unless it be proved that the deponent is dead, or is unable from permanent sickness or infirmity to attend to be personally examined, or distant more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases; and whenever a deposition shall be taken under this Act and the witness shall afterwards be personally examined in court, the deposition shall be read in evidence after the witness shall be so examined.

MINUTE by the Honourable *W. W. Bird*, Esq., subscribed to by the Honourable *H. T. Prinsep*, Esq., dated 12 June 1841.

Legis. Cons. 14 June 1841. No. 8.

Absent Witness Act.

I THINK, notwithstanding the objections urged by Mr. Millett, that an additional clause is necessary both to secure the evidence of the witness being taken before the proper court nearest to which he resides, and to prevent the time of the judge being occupied in taking such evidence at the request of inferior tribunals.

It is true that in adjoining districts it will be easy to ascertain the court nearest to the witness's place of residence, but not so in districts remotely situated, to which, of course, such references will be the most numerous. To meet both these objects, I would propose that the additional clause run as follows, to be inserted at the place in section 5 marked by Mr. Amos (A. A.): "And before granting any such commission, the court granting the same shall make particular inquiry as to the present residence of the witness whose deposition is to be taken under such commission, and as to the court of the same degree as the court granting such commission, or of inferior degree to such court, which may be nearest to the place of residence of the witness, and the commission shall be directed accordingly, except in cases of apparent inconvenience, when such commission shall be directed to the judge having jurisdiction within the district within which the commission is to be executed: and the judge shall at his discretion execute the commission in his own court, or direct it to any subordinate court within his district, which shall have the same effect for all the purposes of this Act as if the commission had in the first instance been directed to such subordinate court."

I have closely followed Mr. Amos in both his propositions on this point, and he will be able to add anything that may have been inadvertently omitted by me.

(signed) *W. W. Bird.*

I think the clause as here proposed by Mr. Bird will answer every purpose desired.

(signed) *H. T. Prinsep.*

(C.) No. II.
Examination of Absent Witnesses.

Act No. VII. of 1841.

Legis. Cons. 14 June 1841. No. 9.

Passed by the Right Honourable the Governor-general of India in Council on the 14th of June 1841.

An Act for a more uniform and an improved Process for taking the Examination of Absent Witnesses.

1. It is hereby enacted, that all Regulations and parts of Regulations for taking the examination of absent witnesses in any presidency are hereby repealed.

2. And it is hereby enacted, that it shall be lawful for any court within the territories under the government of the East India Company, and the several judges thereof, in every civil proceeding depending in such court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the proceeding shall be depending, or to order a commission to issue to any subordinate court for the examination of such witnesses upon interrogatories or otherwise, or to order a commission to issue to any other court for the examination of witnesses at any place or places out of such jurisdiction, upon interrogatories or otherwise, and by the same or any subsequent order or orders, to give all such directions for taking such examinations, as well within the jurisdiction of the court wherein the proceeding shall be depending as without, as may appear reasonable and just: provided always, that any court to whom any such commission shall be directed, shall take the examination in open court in all cases where witnesses are able to attend in court and are not exempted from attendance by law absolutely, or at the discretion of the court: provided also, that such commissions as aforesaid for the examination of witnesses out of such jurisdiction, may be directed otherwise than to some court under special circumstances, which may appear to the court issuing the commission to render such special direction expedient: provided also, that all commissions issued and orders made by any court of the East India Company, and which are required to be executed within the local limits of any of Her Majesty's supreme courts, shall be directed in manner hereinafter mentioned.

3. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the court wherein any such proceeding as aforesaid shall be depending by the authority of this Act, it shall be lawful for the court, or any judge thereof, in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any such person to be at his own place of residence or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers; and the wilful disobedience to any such order shall be deemed a contempt of court and punishable as in other cases of refusing or neglecting to give testimony: provided always, that every person whose attendance shall be required under this Act, shall be entitled to the like payment for expenses and loss of time as upon attendance in court in cases where such expenses are now allowed.

4. And it is hereby enacted, that it shall be lawful for every court or person authorised to take the examination of witnesses by any order or commission issued in pursuance of this Act, and they are hereby authorised and required to take all such examinations upon oath or affirmation, where an affirmation is admissible or required upon a trial, and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and every person causing or procuring another person to commit the offence of perjury hereby defined shall be guilty of subornation of perjury.

5. And it is hereby enacted, that before any order or commission for the examination of any witness under this Act shall be issued, the court or judge issuing the same shall be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness, or other cause allowed by law. And before granting any such commission, the court granting the same shall make particular inquiry as

to

(C.) No. II.
Examination of Absent Witnesses.

to the present residence of the witness whose deposition is to be taken under such commission, and as to the court of the same degree as the court granting such commission, or of inferior degree to such court, which may be nearest to the place of residence of the witness, and the commission shall ordinarily be directed to such court of equal or inferior degree as may most conveniently execute the same: provided, however, that if there be doubt as to which is the most convenient court of equal or inferior jurisdiction, such commission may be directed to the judge having jurisdiction within the district within which the commission is to be executed. And the judge shall at his discretion execute the commission in his own court, or direct it to any subordinate court within his district, which shall have the same effect for all the purposes of this Act as if the commission had in the first instance been directed to such subordinate court. And no deposition taken under this Act, except as hereinafter-mentioned, shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant without collusion more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court, or unless the court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorise the deposition of any witness being read in evidence notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the court, at its discretion, to authorise the reading of the deposition. And all depositions taken under this Act, being duly certified, may be read, at the discretion of the court, without proof of the signature to such certificate.

6. And it is hereby enacted, that any court other than one of Her Majesty's courts, or any judge thereof, may issue such commissions as aforesaid, and such orders as are indicated in the second and third sections of this Act to be executed within the local limits of the jurisdiction of any of Her Majesty's courts, and all such commissions and orders, except when directed otherwise than to a court, shall be directed to a court of requests having jurisdiction within such limits or any part thereof.

7. And it is hereby enacted, that such commissions and orders as aforesaid may be issued for execution under this Act within the territories of princes and states in alliance with the East India Company, and all persons within such last-mentioned territories, being in the service of the East India Company, are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the court or judge issuing any such commission or order, be punishable in like manner as if such offence had been committed within such jurisdiction; and for giving false testimony under the same shall be punishable by any court of justice within the territories of the East India Company.

8. And it is hereby enacted, that whenever the evidence of any absent witness shall be required out of the jurisdiction of the court in which the proceedings for which the evidence is wanted may be pending, and the commission shall be directed to any court, such court may punish the wilful disobedience of any such order as aforesaid as a contempt, notwithstanding it shall not itself have made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony.

Fort William, Legislative Department, the 14th June 1841.

Legis. Cons. 14 June 1841. No. 10.

The following draft of a proposed Act was read in Council for the first time on the 14th June 1841.

Act No. —— of 1841.

An Act for extending the Provisions of Act VII. of 1841, entitled, "An Act for a more uniform Process for taking the Examination of Absent Witnesses," to Criminal Proceedings.

I. It is hereby enacted, that orders and commissions for taking the examinations of absent witnesses in the form and manner provided by Act VII. of 1841, for the case of witnesses whose evidence may be required in a civil action, or

(C.) No. II.
Examination of Absent Witnesses.

proceedings may be issued, executed, and enforced (in manner provided for by that Act) in any criminal proceeding pending in any court; provided always, that no deposition taken under this Act in the course of any criminal proceeding shall be read in evidence, unless taken in open court, except depositions of witnesses exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases, or unable to attend in court from sickness or infirmity, and that no deposition of any accomplice shall be read in evidence under this Act; provided also, that no capital sentence shall be passed in any case in which the conviction of the accused depends in any degree upon the evidence contained in a deposition taken and read in evidence under this Act; provided also, that under no circumstances, except as hereinafter mentioned, shall any deposition taken under this Act be read in evidence in any criminal proceeding, unless it be proved that the deponent is dead, or is unable from permanent sickness or infirmity to attend to be personally examined, or distant more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases; and whenever a deposition shall be taken under this Act, and the witness shall afterwards be personally examined in court, the deposition shall be read in evidence after the witness shall be so examined.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 14th day of September next.

(signed) *T. H. Maddock*,
Secretary to the Government of India.

(No. 83.)

Legis. Cons. 14 June 1841. No. 11.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative Dept.

With reference to your letters, Nos. 547 and 744, dated respectively the 13th April and 14th May last, with enclosures, I have the honour, by direction of the Governor-general in Council, to transmit to you for submission to the Right honourable the Governor of Bengal the accompanying copy of Act No. VII., of 1841, for a more uniform and an improved process for taking the examination of absent witnesses, passed into law under this date; also draft of a proposed Act for extending the provisions of that Act to criminal proceedings.

2. The original enclosure received with your letter of the 14th ultimo is returned herewith.

I have, &c.

(signed) *T. H. Maddock*,
Secretary to the Government of India.

Council Chamber,
14 June 1841.

—(C.) No. III.—

ON THE MADRAS JUDICIAL SYSTEM.

(No. 173.)

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India.

Legis. Cons. 12 April 1841. No. 12.

Judicial Dept.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 308, dated 5th October 1840, and in reply to transmit for submission to the Right hon. the Governor-general of India in Council copies of the proceedings of the Sudder and Foujdaree Adawlut, dated 14th ultimo, conveying their opinion on the changes in the judicial system proposed by the Indian Law Commission, and of a minute recorded under date the 3d instant, by the Hon. Mr. Bird, on the same subject.

2. His Lordship in Council concurs generally in the views expressed by the judges of the Sudder and Foujdaree Adawlut in regard to the proposed changes, but is of opinion with Mr. Bird that it would be objectionable to authorise, as the judges suggest in the 7th paragraph of their proceedings, the sessions judge to pass sentence in cases which have not been investigated by that officer. The exercise of such a power would lead to the employment of the lower judicatories in taking evidence for the higher in cases which should be investigated exclusively by the latter.

3. With reference to the 9th paragraph of the proceedings, his Lordship in Council agrees with Mr. Bird in thinking that, as long as the use of the Mahomedan law is continued, it will be necessary to retain a law officer for each court, and the proposition that he shall continue to be associated with the sessions judge upon a trial of persons, and for reference to be made to him on questions of law, appears unobjectionable. He is of opinion also, for the reasons stated by Mr. Bird, that the futwah should be dispensed with, as recommended by the judges of the Sudder and Foujdaree Adawlut.

4. The plan of having distinct and separate courts at each station appears to his Lordship in Council to be objectionable, because of the double authority and control it will involve, because of the difficulty there would be in making a fair division of labour, which must always depend upon local circumstances, because of the expense it will occasion in providing at most of the stations new buildings for such separate courts, and because the business of the whole zillah will be much better conducted under one acknowledged head than under divided superintending authorities, who would be continually liable to come in collision with each other. It will be preferable, he thinks, that there should be a civil and criminal court at each Sudder station, with the civil and sessions judge at the head, and with subordinate judicatories attached, as recommended by the judges.

5. With reference to the conclusion of the 28th paragraph of the proceedings of the Sudder Adawlut, his Lordship in Council observes that there can be no necessity for requiring persons to proceed to Mangalore, when the special appeals from the Sudder Ameen of Sircy can be tried by the assistant judge of the proposed superior grade at Honore.

6. The Right hon. the Governor in Council agrees with the Sudder Adawlut in thinking that every court should issue its own order for the execution of its decrees, and should dispose of all miscellaneous petitions respecting such execution, subject of course to an appeal to the superior court.

7. The establishments proposed will require modification, and his Lordship in Council is not of opinion that the number of law officers in the Sudder Adawlut need exceed one Mahomedan and two Hindoos.

I have, &c.

(signed) *H. Chamier*,
Chief Secretary.

Fort St. George,
23 February 1841.

(No. 1.)

STATEMENT for the Year 1839, of DELAY.

Zillah, and Number of Trials disposed by the Foujdaree Adawlut, during the Year 1839.		In Preliminary Inquiry.						In the Circuit Court.						In the Foujdaree Adawlut.						TOTAL.					
		Trials at once Disposed of.			Trials Returned for further Evidence, &c.			Trials at once Disposed of.			Trials Returned for further Evidence, &c.			Trials at once Disposed of.			Trials Returned for further Evidence, &c.			Trials at once Disposed of.			Trials Returned for further Evidence, &c.		
		Between Apprehension and Trial.			Between Apprehension and Trial.			Between Trial and reference of the Record.			Between Trial and reference of the Record.			Between the Receipt of the Record and Sentence.			Between the Receipt of the Record and Sentence.			Between Trial and Sentence.			Between Trial and Sentence.		
		Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.
Chittoor	6	15	182	77	-	-	-	9	99	44	-	-	-	22	37	28	-	-	-	50	215	149			
	4	-	-	-	50	82	59	-	-	-	8	90	59	-	-	-	26	113	70	-	-	-	86	256	189
Masulipatam	1	42	42	42	-	-	-	32	32	32	-	-	-	30	30	30	-	-	-	104	104	104			
	1	-	-	-	152	152	152	-	-	-	78	78	78	-	-	-	118	118	118	-	-	-	348	348	348
Trichinopoly	1	37	37	37	-	-	-	21	21	21	-	-	-	19	19	19	-	-	-	77	77	77			
Tillicherry	1	66	66	66	-	-	-	13	13	13	-	-	-	27	27	27	-	-	-	106	106	106			
TOTAL	-	160	327	222	202	234	211	75	165	110	86	168	137	98	113	104	144	231	188	337	502	436	534	604	537
	4	40	82	55	-	-	-	19	41	27	-	-	-	24	28	26	-	-	-	84	125	109			
	2	-	-	-	101	117	105	-	-	-	43	84	68	-	-	-	72	115	94	-	-	-	217	302	268
Bellary	4	79	284	134	-	-	-	40	178	97	-	-	-	18	43	27	-	-	-	141	489	258			
Cuddapah	5	147	214	182	-	-	-	16	118	64	-	-	-	14	31	19	-	-	-	227	363	260			
	1	-	-	-	306	305	305	-	-	-	10	10	10	-	-	-	139	139	139	-	-	-	448	448	448
Cumbum	2	-	-	-	69	285	177	-	-	-	36	46	41	-	-	-	122	185	153	-	-	-	300	443	371
Chingleput	2	88	135	111	-	-	-	32	32	32	-	-	-	12	27	19	-	-	-	132	104	163			
Cuddalore	4	85	312	183	-	-	-	54	112	79	-	-	-	16	20	18	-	-	-	158	399	280			
Chicacole	10	110	374	237	-	-	-	69	169	131	-	-	-	12	57	24	-	-	-	254	556	392			
	1	-	-	-	321	321	321	-	-	-	143	143	143	-	-	-	47	47	47	-	-	-	511	511	511
Vizagapatam	8	83	203	140	-	-	-	115	174	149	-	-	-	15	25	20	-	-	-	222	381	309			
Rajamundry	*5	-	-	-	807	1185	1007	-	-	-	106	108	106	-	-	-	61	61	61	-	-	-	974	1352	1174
	6	43	371	157	-	-	-	78	116	101	-	-	-	15	32	22	-	-	-	181	512	281			
Nellore	6	41	158	90	-	-	-	24	83	61	-	-	-	25	50	40	-	-	-	126	238	191			
Guntoor	2	17	56	36	-	-	-	24	179	101	-	-	-	11	28	19	-	-	-	52	263	157			
Combaconum	1	82	82	82	-	-	-	82	82	82	-	-	-	21	21	21	-	-	-	185	185	185			
	2	-	-	-	217	223	220	-	-	-	8	13	10	-	-	-	53	59	56	-	-	-	283	290	286
Madura	5	92	217	144	-	-	-	26	31	29	-	-	-	9	40	18	-	-	-	135	287	191			
Tinnevelly	4	110	197	153	-	-	-	18	37	25	-	-	-	15	22	18	-	-	-	166	233	197			
Salam	2	30	37	33	-	-	-	43	46	44	-	-	-	12	15	13	-	-	-	91	92	91			
	2	-	-	-	13	90	51	-	-	-	11	29	20	-	-	-	40	45	42	-	-	-	82	146	114
Coimbatore	5	86	163	130	-	-	-	32	58	43	-	-	-	13	34	20	-	-	-	157	212	193			
Canara	5	71	191	130	-	-	-	7	20	14	-	-	-	17	33	23	-	-	-	112	235	173			
	1	-	-	-	99	99	99	-	-	-	15	15	15	-	-	-	89	89	89	-	-	-	203	203	203
Malabar	10	50	389	147	-	-	-	6	15	10	-	-	-	12	36	18	-	-	-	78	437	175			
	3	-	-	-	86	126	111	-	-	-	6	15	10	-	-	-	44	79	56	-	-	-	173	188	178
Cochin	1	158	158	158	-	-	-	18	18	18	-	-	-	21	21	21	-	-	-	197	197	197			
Sirsy	2	74	189	130	-	-	-	15	17	16	-	-	-	16	36	26	-	-	-	125	220	172			
TOTAL	-	1446	3727	2377	1917	2634	2291	699	1485	1906	335	379	355	274	571	386	589	698	637	2739	5483	3871	2974	3581	3285
Average	18	80	207	131	-	-	-	39	82	61	-	-	-	15	32	21	-	-	-	152	305	215			
	8	-	-	-	240	329	286	-	-	-	42	47	44	-	-	-	73	87	79	-	-	-	372	447	410

* Thug cases.

(signed) *W. Douglas*, Regr.

(A true copy.)

(signed) *H. Chamier*, Chief Secy.

(No. 2.)

STATIONS.	CIVIL SESSION JUDGES.	ASSISTANT JUDGES.	PRINCIPAL SUDDER AMEENS.	SUDDER AMEENS.
1. Bellarie	1	1	-	1. Mooftee Sudder Ameen.
				2. Ditto - ditto.
2. Cuddapah	1	1	-	3. Pundit Sudder Ameen.
				4. Mooftee ditto.
				5. Extra ditto.
3. Chittoor	1	1	-	6. Pundit Sudder Ameen.
				7. Provincial ditto.
4. Chingleput	1	-	1	8. Mooftee Sudder Ameen.
5. Cuddalore	1	-	1	9. Pundit Sudder Ameen.
6. Nellore	1	-	1	10. Mooftee Sudder Ameen.
7. Guntoor	1	-	1	11. One.
8. Masulipatam	1	-	1	12. Provincial Court Sudder Ameen.
9. Rajamundry	1	1	-	13. Pundit Sudder Ameen.
				14. Mooftee ditto.
Vizagapatam	-	-	1 detached	15. Pundit Sudder Ameen.
10. Chicacole	1	—	—	—
Itchapoor	-	-	1 detached	16. Mooftee Sudder Ameen.
11. Trichinopoly	1	-	1	17. Provincial Court Sudder Ameen.
12. Combaconum	1	1	-	18. Pundit Sudder Ameen.
				19. Mooftee ditto.
13. Madura	1	1	-	20. Pundit Sudder Ameen.
				21. Sudder Ameen.
14. Tinnevelly	1	-	1	22. One.
15. Coimbatore	1	1	-	23. Pundit Sudder Ameen.
				24. Ditto - ditto.
16. Salem	1	1	-	25. Mooftee Sudder Ameen.
17. Mangalore	1	2	-	26. Pundit ditto.
				27. Mooftee Sudder Ameen.
				28. Pundit ditto.
				29. Sudder Ameen.
Honore	-	1 detached	-	30. One.
Sirsee	-	-	-	31. One detached.
18. Calicut	-	1	-	32. Pundit Sudder Ameen.
				33. Mooftee ditto.
Tillicherry	-	1 detached	-	34. Provincial Court Sudder Ameen.
Cochin	-	-	1 detached	—

(signed) *W. Douglas*, Reg^{r}.

(True copy.)
(signed) *H. Chamier*, Chief Sec^{y}.

(No. 3.)

	Rs.	as.	p.	Rs.	as.	p.	Rs.	as.	p.
12 Provincial Judges	-	-	-	-	-	-	4,62,000	-	-
12 Zillah Judges	-	-	-	-	-	-	3,36,000	-	-
9 Assistant Judges	-	-	-	-	-	-	1,51,200	-	-
3 Principal Sudder Ameens	-	-	-	-	-	-	18,000	-	-
3 Provincial Registers	-	-	-	-	-	-	25,000	-	-
11 Zillah Registers	-	-	-	-	-	-	85,200	-	-
4 Provincial Courts Establishments (exclusive of law officers)	-	-	-	-	-	-	64,370	6	-
Present Establishment of the 11 Zillah, 9 Auxiliary, and 3 Principal Sudder Ameens' Courts	-	-	-	-	-	-	2,19,132	-	-
							13,61,102	6	-
18 Sessions and Civil Judges - - at	2,333	-	-	5,03,928	-	-			
11 Assistant Judges - - - - at	1,400	-	-	1,84,800	-	-			
2 Ditto - ditto - - - - at	1,750	-	-	42,000	-	-			
10 Principal Sudder Ameens - - at	500	-	-	60,000	-	-			
Sudder Ameens now employed - 28 to be employed 34									
Difference - - - - 6 - at	200	-	-	14,400	-	-			
Establishment for 6 Sudder Ameens - -	45	-	-	3,240	-	-			
Ditto for 10 Sessions and Civil Judges, with an Assistant Judge each - - - at	1,253	-	-	1,50,450	-	-			

(*continued*)

(C.) No. III.
Madras Judicial System.

	Rs.	as.	p.	Rs.	as.	p.	Rs.	as.	p.
Establishment for 7 Sessions and Civil Judges, with a Principal Sudder Ameen each - at	1,126	–	–	94,534	–	–			
Ditto for Sessions Judge at Chicacole, as Vizagapatam at present - - - at	645	–	–	7,740	–	–			
Detached:									
Establishment for an Assistant Judge at Honore - - - - - - at	568	12	–	6,825	–	–			
Ditto for an Assistant Judge at Tellicherry - - - - - - at	655	12	–	7,869	–	–			
Ditto for a Principal Sudder Ameen at Itchapore - - - - - - at	414	8	–	4,974	–	–			
Ditto for a ditto at Vizagapatam - at	414	8	–	4,974	–	–			
Ditto for a ditto at Cochin - - at	466	–	–	5,592	–	–			
Ditto for a Sudder Ameen at Sirsy - at	100	–	–	1,200	–	–			
				10,92,576	–	–			
New Translators in the Sudder Court - at	-	-	-	19,824	–	–			
							11,12,400	–	–
Decrease - - - - -	-	-	-	-	-	-	2,48,702	6	–

(signed) *W. Douglas*, Regr.

(True copy.)

(signed) *H. Chamier*, Chief Secy.

(No. 4.)

Memorandum of the Pay of the Translators in the—			Rs.	as.	p.	Rs.	as.	p.
Zillah Court of -	Nellore - -	1 Translator - - - - -	-	-	-	70	–	–
—	Rajamundry -	1 Ditto - - - - -	70	–	–			
		1 Deputy ditto - - -	42	–	–			
						112	–	–
—	Malabar -	1 Translator - - - - -	-	-	-	70	–	–
—	Madura -	1 Ditto - - - - -	50	–	–			
		1 Ditto - - - - -	30	–	–			
						80	–	–
—	Salem - -	None.		—		—		
—	Bellaree -	1 Translator - - - - -	-	-	-	70	–	–
—	Canara -	1 Ditto - - - - -	85	–	–			
		1 Ditto - - - - -	52	8	–			
		1 Ditto under the Assistant Judge.	52	8	–			
						190	–	–
—	Combaconum -	1 Translator - - - - -	-	-	-	70	–	–
—	Chingleput -	1 Ditto - - - - -	-	-	-	70	–	–
—	Cuddapah -	1 Ditto - - - - -	70	–	–			
		1 Ditto - - - - -	35	–	–			
		1 Ditto - - - - -	30	–	–			
						135	–	–
—	Chittoor -	1 Ditto - - - - -	-	-	-	87	8	–
Auxiliary Court at	Guntoor -	1 Ditto - - - - -	-	-	-	70	–	–
—	Coimbatore -	None.		—		—		
—	Vizagapatam -	1 Translator - - - - -	70	–	–			
		1 Ditto - - - - -	40	–	–			
						110	–	–
—	Masulipatam -	1 Ditto - - - - -	50	–	–			
		1 Ditto - - - - -	35	–	–			
						85	–	–
—	Tillicherry -	1 Head English Writer and Translator.	-	-	-	55	–	–
—	Cochin - -	1 Ditto - - - - -	-	-	-	55	–	–
—	Tinnevelly -	1 Ditto - - - - -	-	-	-	50	–	–
—	Trichinopoly -	1 Ditto - - - - -	-	-	-	60	–	–
—	Cuddalore -	1 Translator - - - - -	-	-	-	70	–	–
Principal Sudder Ameens, Court of	Itchapore -	1 Ditto - - - - -	-	-	-	70	–	–
—	Honore - -	1 English Writer and Translator	-	-	-	72	8	–
—	Sircy - -	None.		—		—		
		TOTAL Rupees - - - -				1,652	–	–

(signed) *W. Douglas*, Regr.

(A true copy.)

(signed) *H. Chamier*, Chief Secy.

(No. 5.)

ESTABLISHMENT of the Civil and Session Judges, with an Assistant Judge to each.

	Rs.	as.	p.
1 Nazir	100	–	–
1 Naib	35	–	–
1 Sheristadar	80	–	–
1 Deputy	30	–	–
18 Gomastahs, at 13/8	241	–	–
1 Head Writer	70	–	–
8 English Writers	213	–	–
1 Native Register	35	–	–
1 Record Keeper	40	–	–
1 Deputy	20	–	–
1 Head Juwabnavees	30	–	–
1 Sub ditto	25	–	–
1 Government Vakeel	20	–	–
1 Shoroff	14	–	–
1 Moochee	10	8	–
1 Ructwan	5	4	–
1 Mussoljee	5	4	–
1 Sweeper	3	8	–
1 Duffadar	10	8	–
12 Deloyets	84	–	–
30 Peons	157	8	–
1 Whipper	5	4	–

(signed) *W. Douglas*, Regr.

(A true copy.)
(signed) *H. Chamier*, Chief Secy.

(No. 6.)

ESTABLISHMENT of the Civil and Session Judges, with a Principal Sudder Ameen.

	Rs.	as.	p.
1 Nazir	100	–	–
1 Naib	35	–	–
1 Sheristadar	80	–	–
1 Deputy	30	–	–
15 Gomastahs	209	–	–
1 Head Writer	70	–	–
8 English Writers	179	–	–
1 Native Register	35	–	–
1 Record Keeper	40	–	–
1 Deputy ditto	20	–	–
1 Head Juwabnavees	28	–	–
1 Sub ditto	20	–	–
1 Government Vakeel	20	–	–
1 Shoroff	14	–	–
1 Moochee	10	8	–
1 Ructwan	5	4	–
1 Mussalchee	5	4	–
1 Sweeper	3	8	–
1 Duffadar	10	8	–
10 Deloyets, at 7 rs. each	70	–	–
25 Peons, at 5 ¼ rs. each	131	4	–
1 Whipper	5	4	–

(signed) *W. Douglas*, Regr.

(A true copy.)
(signed) *H. Chamier*, Chief Secy.

(A.)

(No. 7.)

EXTRACT from the Proceedings of the Sudder and Foujdaree Adawlut, under date the 14th January 1841.

Legis. Cons. 12 April 1841. No. 14. Enclosure.

READ extract from the Minutes of Council under date the 9th November last, forwarding copy of a despatch from the Supreme Government, and of a letter from the Law Commission, and requesting the sentiments of this court on the proposed alterations in the judicial system under this presidency, which are therein specified.

1. The judges of the Sudder and Foujdaree Adawlut most fully concur in opinion with the Law Commission as to the necessity for adopting measures to shorten the period between the arrest and trial of persons accused of the more heinous crimes. But the arrangement suggested by the Law Commission for this purpose, though it will lessen in a material degree the delay previous to trial, will by no means remedy the existing evil to the extent which its magnitude requires. It will in fact do nothing more than render universal throughout the provinces the half measure directed by the circular order of the Foujdaree Adawlut, under date the 22d March 1830, to be carried into effect at the four stations under this presidency, at which provincial courts are placed, and quarter sessions held, which went to make such sessions permanent.

Criminal Judicature.

2. The annexed statement No. 1, will show that, during the last year 1839, this arrangement reduced the period between arrest and trial at the said four stations* on an average to 55 days instead of 27 days, as calculated by the Law Commission, and that the delay elsewhere, now averaging 132 days †, will, by the universal adoption of permanent sessions, be reduced only to 55 days. The delay between arrest and trial, even after the introduction of this arrangement, would, therefore, still continue to be very considerable. Prosecutors and witnesses are occasionally now sent back to their respective villages from the four stations in question, where it is now in operation, to return again when the final trial commences; and

No. 1.

Chittoor:	Days.
Masulipatam, shortest	40
Trichinopoly, longest	82
Tillicherry, average	55*
In para. 14, *vide* note.	
Shortest	80
Longest	207
Average	132†

½) 55 days' delay. 27 ½ calculated on by the Law Commission.

and experience has shown that the advantage from the general adoption of the measure, thus already partially introduced, will ensure only to the extent of about one-half the result calculated on by the Law Commission.

3. In the gravest crimes, three examinations of each case would still continue to be held; two of them conducted generally under the same roof. The recollection on the part of the witnesses would no doubt be more fresh than at present, still the vivid impressions of the first would be greatly obscured before the third examination; and the prison intrigue and chicanery which promote recantation, false defences, and perjury in their support would in no respect be diminished.

4. But the chief argument against the continuance of the present harassing system of three separate investigations is, that the extreme annoyance of such repeated attendance, the extent of which can be measured by nothing but the feelings of the people themselves, drives many away from our courts, and induces them either to conceal altogether their sufferings from crime, or to refrain from stating their true extent, rather than undergo the infliction of the losses and the personal vexation which are involved in such repeated and lengthened attendance on our tribunals. Besides, the very delay which elapses between the collection of the evidence by the committing tribunal, and the hearing of it by the judge who is to decide upon it, from the facilities which it affords to the manufacture of false evidence, is itself one of the most exciting causes of perjury, and consequent erroneous judgments, so that even suffering by crime is in some districts an evil less dreaded than the protracted attendance necessary on our courts, which often does not terminate in the conviction of the offenders.

5. If change, therefore, is resolved upon, it appears to the Foujdaree Adawlut, that the improvement should be as effectual as possible, and that the evil can be completely eradicated by nothing less than some arrangement under which a single trial by an European judge shall do the work of the two now conducted by the criminal and circuit courts respectively. Indeed, as regards European and American prisoners, as well as in all cases tried by the Governor's agent, the Law Commissioners themselves suggest the entire abolition of the intermediate state of committal, and propose offenders should go direct at once from the native police or magistracy who arrest to the judge who is to try them. The same mode of proceeding at present obtains in all cases liable to sentence by the criminal courts, and the courts of circuit are the only courts in which it does not obtain. The Foujdaree Adawlut see the most urgent reasons for its adoption universally; they would therefore suggest, that all cases not punishable by the police or magistracy, should go direct from them to the sessions judge, whose duty it would be at once to distribute them to the respective authorities, who, under the new plan proposed by the Law Commission, will be competent to try and pass sentence on the offenders, except at the six detached courts specified in the statement No. 2, to which the magistracy and the police should send such cases as they are competent to decide direct, forwarding to the sessions judge direct all other graver offences.

6. It will be necessary under this arrangement, that the sessions judge should himself perform what may remain to be done, in order to complete each case for trial that is to be tried by himself, but this is only what is often now done by circuit judges, and always by criminal judges, sudder ameens and assistant criminal judges, in cases in which sentence is passed by themselves, and what will be done under the proposed new arrangement by assistant judges and principal sudder ameens in cases in which sentence is passed by them; and the Foujdaree Adawlut believe, that it never has been and never will be found liable to any objection so far as the trial itself is concerned. It will besides be attended with three obvious advantages, viz. 1st, It will bring higher qualifications to bear upon the preparation of the cases; 2nd, The preparation will be more exactly adapted to the trial, both being the work of the same person, who must know better than any other can know what parts of the case require further elucidation for the full satisfaction of his own mind in the discovery of the truth; and 3dly, it will be a clear saving of so much of the assistant judge's or principal sudder ameen's time, and of so much delay before the trial as it would take to hear and consider the original informations without taking up but a very little more of the judge's time than if that work had been performed by the assistant judge or principal sudder ameen; for whatever either of these did,

did, the judge must still, before the trial, make himself acquainted with all the previous informations and proceedings. If the original informations were sent up to the judge immediately that they are completed, without waiting, as is now done, for all the parties concerned to accompany them, and if the judge were to communicate direct with the officer by whom the informations are taken, as he, in cases to be tried by him, and the assistant judges and principal sudder ameens in cases to be tried by them, ought to be empowered and required to do, it is probable that the trial might be entered upon with all the advantages of the highest previous preparation with very little more delay than it is now usually entered upon without any of them. But this can be attained only by the judge himself, who is to pass the sentence, completing the preparation for trial.

7. It may be requisite occasionally, where a case on inquiry proves graver than what is charged by the police or magistracy, and the authority who investigates it finds himself incompetent to pass sentence, that it should be handed on by the lower to the higher court for sentence. But in such cases the higher court need not be required to hold further proceedings, except it deems it necessary to take new evidence on points upon which that taken by the lower tribunal may appear to it defective.

8. This plan will likewise involve the consequence, that a prisoner once put on his trial, for even the greatest offence, can never again be brought forward for the same crime. But this will merely extend to the most serious crimes, the same principle which is now acted on as regards all minor offences; a greater latitude, however, must necessarily be given to the police, as to the period within which proof of the graver crimes is to be completed.

9. The Foujdaree Adawlut concur with the Law Commission in opinion that it will be "proper to leave the criminal law as it now stands until Government shall come to a determination upon the penal code;" but they do not think it necessary that the sessions judge should be "assisted by the Mahomedan law officer." They are of opinion that, as in their own court, and in the courts of the Governor's agent, so elsewhere all futwahs may be safely abolished, and that where the Madras Code and the Acts of the Supreme Government do not define the punishment, the criminal tribunals should administer the Mahomedan law as explained by the Foujdaree Adawlut, to whom, in all cases of doubt or difficulty, they should make a reference for its interpretation. The principle acknowledged in Regulation VI. 1832 of the Bengal Code, as well as in the Rules passed by this government for the agents of the Governor of Fort St. George, fully recognizes the propriety of entrusting solely to the experienced European functionary the decision of cases in the court where he presides, and the Foujdaree Adawlut hope this may be done with perfect safety in all criminal cases coming before judicial officers of such standing as those likely to be nominated to the situation of sessions judge, especially under the new check of requiring from them notes in English in all trials referred to the Foujdaree Adawlut, and that already existing in the calendars. But if, notwithstanding the recognition of this principle both at Madras and Bengal, the previous opinion expressed by the Honourable Court of Directors, in their despatch of the 12th October 1831, penned in ignorance of the adoption of this principle by the Indian Legislature, is deemed to require that the sessions judge should have the benefit of some native aid, either the present law officers may be nominated his assessors, or the sessions judge may be empowered to avail himself of the services of respectable natives, nearly as a jury, upon the principle either of Regulation VI. 1832 of the Bombay Code, or of Regulation X. 1827 of that for Madras. The Foujdaree Adawlut are strongly inclined to the gradual and discretionary introduction of this plan.

10. With reference to paras. 18 and 19 of the letter from the Law Commission, the Foujdaree Adawlut are of opinion, that the calendars and statements now submitted by the criminal judges, assistant judges, and principal sudder ameens to the judges on circuit, may safely be dispensed with altogether under the new arrangement; the monthly reports now submitted by them respectively direct to the Foujdaree Adawlut, being sufficient for every purpose of superintendence and correction, and these monthly reports need not undergo any revision by the sessions judge. The revision of them by the present courts of circuit has for several years been given up, it having been found by experience, that little time or labour was saved by it to the Court of Foujdaree

daree Adawlut, and something perhaps lost in uniformity of principle and practice. The subject matter of the calendars and statements prepared for the judge on circuit, and of the monthly reports submitted to the Foujdaree Adawlut, is the same, with the difference only, that the latter contain an account of the evidence in each case, which the former do not. The discontinuance of these calendars and statements will not interfere with the exercise by the sessions judge of the power vested in the present collective courts of circuit by Section 24, Regulation X. of 1816, or in the judge on circuit by Clause 3, Section 4, Regulation II. of 1822, and Clause 2, Section 8, Regulation VI. of 1827, so far as the latter relates to the province of the criminal judges.

11. The Foujdaree Adawlut are of opinion that the removal of any native police officer for abuse of authority or neglect of duty, when proposed by the sessions judge, as arising out of cases tried either by himself or by the courts under him, should lie open to decision only by the Foujdaree Adawlut upon the report of the sessions judge. He should forward a copy of his report to the magistrate, who ought to be at liberty to address direct to the Foujdaree Adawlut any explanation or objection he may have to offer. All neglect or dilatoriness on the part of the police or magistracy in respect to cases before the sessions judge, assistant judge, or principal sudder ameen respectively, should be brought before the Foujdaree Adawlut either by special report or in the established returns, that the same may be noticed and rectified, the returns of the assistant judges and principal sudder ameens being forwarded, as at present, direct to the Foujdaree Adawlut.

12. Against all sentences passed by the magistracy, whether for petty offences or in regard to persons held to security, the Foujdaree Adawlut are satisfied that an appeal had better lie, in the first instance, to the sessions judge, because the distance of the presidency will otherwise render the appeal from the provinces merely nominal instead of real; but though the sessions judge should have the power to receive such appeals, and to call for the proceedings of the magistracy, or for explanations from them, the decision thereon should be reserved to the Foujdaree Adawlut alone, who should possess the power of calling for such further explanations as they might deem requisite, and of issuing such orders as justice might require in conformity with the general provisions of the code.

13. It will likewise be essential to the speedy disposal of current cases, that, as provided in Regulation III. 1807, the most unrestrained and direct communication should exist between the sessions judge, assistant judge, and principal sudder ameen respectively, and the magistracy or police, whichever of the two may have forwarded the case, in regard to any further evidence that may be required in the cases under trial; it being understood that all other correspondence must be addressed to the magistrate exclusively, who alone is competent to issue orders on other subjects to the native police, and that, except at the detached courts, such other correspondence is to be conducted by the sessions judge alone.

14. It seems sufficient that the reports on the working of the new system, proposed in para. 21 of the letter from the Law Commission, should be made by the sessions judge only once at the close of each year, when the usual criminal returns are forwarded.

15. In para. 48 of their letter, the Law Commission state that there is only one district in which it will be necessary to provide for the trial of cases cognizable by the sessions judge at a place detached from his own station, viz. Canara; and they propose that the sessions judge at Mangalore shall go on circuit to Honore at least once in every year. The Law Commission overlook the fact that in Malabar, also both Cochin and Tillicherry, at which assistant judges are stationed, are detached to a considerable distance on each side of Calicut, the station of the present zillah, and of the future sessions judge.

16. In no part of the provinces under this government is there greater or more important litigation, or more frequent and more serious crime, than in Malabar and Canara, and the temporary absence of the civil and session judges from either Mangalore or Calicut, in order to relieve the gaols at Sirsee and Honore, or Cochin and Tillicherry respectively, would throw the whole of the judicial business, both civil and criminal, into serious arrear, at the very stations

tions where such an event is perhaps the most to be deprecated, whilst a circuit to these detached stations only once in the year would also aggravate the delay now experienced at these places, as elsewhere, in the delivery of the gaols only half-yearly.

17. The judicial duties, both at Sirsee and Cochin, are extremely light, as shown in the margin. But the local peculiarities of these two stations are very different. The former is situated above the Ghauts, in a thinly peopled country, where litigation is trifling, but crime not unusual; the latter is a considerable town, with a large population, including several of European descent, amongst whom civil disputes are more frequent than criminal offences. Cochin is also much resorted to by European shipping, and it is essential for the peace of the place and the prosperity of its trade, that the superintendence of justice should there be placed in the hands of a European. The Foujdaree Adawlut, therefore, are of opinion, that it will be sufficient to station at Sirsee a sudder ameen instead of a principal sudder ameen, with power to decide cases cognizable by a sudder ameen without the intervention of the judge or assistant judge, all criminal cases not adjudicable by him being forwarded by the magistracy or the police direct to Honore, to be there finally disposed of by the assistant judge. At Cochin, a European principal sudder ameen will suffice in lieu of an assistant judge. But it will be necessary that, in addition to his own powers, he should possess, as the present assistant judge there now does, the authority of a justice of the peace, and of joint magistrate also, and that his jurisdiction should extend over Europeans as well as Americans, in order that, be the offender who he may, he may have primary cognizance of all offences, forwarding the cases of which he may be incompetent finally to dispose, to the sessions judge at Calicut.

1839:—File Date.

	Original Suits	Appeals.	Total.	Criminal Cases.
Sirsee -	42	11	53	74
Cochin -	79	17	96	41

18. The Foujdaree Adawlut would likewise submit that the assistant judges at Honore and Tillicherry should be officers of standing in the service, selected for their experience, and placed on a superior rate of allowance, say Rs. 1,750 per mensem, and that they should, as an exception from the rest, be vested, in addition to their own powers, with those also proposed to be vested elsewhere in the sessions judge alone; for this is the sole means that can be suggested to expedite trials at these two stations as much as elsewhere, so as to render unnecessary any circuit or detachment of the sessions judges from Mangalore and Calicut, which is open to far greater objection than this expedient.

19. With reference to paragraph 17 of the letter from the Law Commission, the Foujdaree Adawlut are of opinion, that except at Cochin, the gaolers at every station where there is a European functionary*, should be Europeans exclusively, and that, except where the stations are detached† from that of the civil and session judge, he alone should be authorised to superintend the gaols, the detailed management thereof being vested in the assistant judges, as proposed by the Law Commission, where such officers exist. The Foujdaree Adawlut propose, in modification of the Bengal plan, to exclude the principal sudder ameens from the superintendence of the gaols where European judicial officers exist, because it is presumed that the principal sudder ameens will generally be natives, and usually persons of the higher castes, most likely by their superior education, intelligence, and wealth to rise above the rest of their countrymen. Now, most natives of this description would consider themselves polluted by entering the wards of a goal or coming into immediate contact with the crowds of its inmates, consisting usually of the very lowest and most impure of all outcasts, and they would either shrink altogether from a duty so repugnant to the feelings and prejudices of caste, or would perform it with repugnance, superficially and ineffectively. Besides, they never could properly control the European gaoler, and might be more liable than covenanted servants to favour the rich or influential convicted of perjury, forgery, &c.

* The only stations where there are proposed to be no European judicial functionary will be,
1. Vizagapatam.
2. Itchapoor.
3. Sirsee.

† The detached stations are proposed to be,
1. Assistant Judge, Honore.
2. Assistant Judge, Tillicherry.
3. Principal Sudder Ameen, Cochin.
4. Principal Sudder Ameen, Vizagapatam.
5. Principal Sudder Ameen, Itchapore.
6. Sudder Ameen at Sirsee.

20. Subject to the modifications above proposed, the Foujdaree Adawlut entirely approve the suggestions contained in the letter from the Law Commission, from paragraph 12 to 23 inclusive.

21. The adoption of the arrangements proposed by the Law Commission in paragraphs 61 and 62 of their letter, will no doubt expedite translations, and complete that reform which seems necessary of the criminal judicature under this Presidency. Section 5 as well as Section 4, Regulation IX. of 1831, of the Bengal Code, may advantageously be rendered applicable to the Foujdaree Adawlut,

(C.) No. III.
Madras Judicial System.

Adawlut, and the transmission to the Foujdaree Adawlut of notes in English, taken down at the time, of all trials referred by the sessions judge, accompanied by the original record, (a measure long ago proposed here by the acting second puisne judge, Mr. Dickinson, when a judge of circuit,) will, in the opinion of the Foujdaree Adawlut, be a great improvement; for it will not only relieve the sessions court altogether from the burden of translation, but will ensure stricter attention to the evidence by the judge who tries the case.

Civil Judicature.

22. With respect to the alteration proposed by the Law Commission generally, but especially in regard to those for improving the administration of civil justice in the Madras territories, much will depend on the selection made of efficient officers to fill the highly important situation of session and civil judge; and with the view at once to save unnecessary expenditure for separate court houses and for distinct establishments, to simplify the plan, and to prevent all clashing of authority by placing the whole of the subordinate functionaries under the immediate eye and personal control of the most experienced head, the Sudder Adawlut would suggest that at the 18 principal and most centrical stations in each province, specified in the statement No. 2, there should be a single court for the distribution of civil justice to all, over which he should preside, aided, according to the judicial importance of the station, either by an assistant judge or a principal sudder ameen, with the requisite number of sudder ameens, as shown in the said annexed statement, No. 2.

23. It is proposed that the latter should be appointed by the Sudder Adawlut on the recommendation of the civil judge, who will generally select the most distinguished district moonsiffs for that office.

24. As proposed by the Law Commission, one of the chief duties of the civil judge will be the supervision of the important work performed by the district moonsiffs, now forming one of the principal and most useful branches of our civil judicature. It is accordingly contemplated that he should nominate them, subject to the confirmation of the Sudder Adawlut, and that they should be removable only by him, subject on his report to the confirmation of the Sudder Adawlut.

25. In regard to original suits, it is contemplated by the Sudder Adawlut, as proposed by the Law Commission, that the civil judge should file all such as are now cognizable by the provincial courts, and where he is aided by only a principal sudder ameen, such also as the latter is incompetent to decide; all others being filed by his assistant judge or principal sudder ameen, as provided in Regulation I. and VII. 1827 respectively, such as they cannot decide being liable to be referred, as at present, to the files of the sudder ameens and district moonsiffs.

26. In regard to regular or summary appeals, it is proposed that all without exception should lie in the first instance to the civil judge, whether from district moonsiffs, sudder ameens, or from his principal sudder ameen or assistant judge, but that he should have power to refer such appeals from the two former as he may be unable himself to decide to which of the two latter officers may be attached to his court.

27. Under this plan, all special appeals will lie to the Sudder Adawlut, as proposed by the Law Commission, except when the civil judge has been unable to decide the regular appeal, and has referred it for decision by the assistant judge or principal sudder ameen attached to his court. In this case the special appeal will lie to himself instead of to the Sudder Adawlut, as is proposed also in the next paragraph respecting the detached courts.

28. As an exception from the above, it is proposed, as suggested by the Law Commission, that at the detached courts of the assistant judges at Honore and Tillicherry, of the principal sudder ameens at Vizagapatam, Itchapore, and Cochin, and of sudder ameen at Sirsee, these officers respectively should receive and decide appeals direct from such of the district moonsiffs under them, as the Sudder Adawlut may attach to each. In such cases also, the special appeal only, instead of the regular one from the district moonsiffs, will lie to the civil judge. Regular appeals will of course lie from original suits decided by the said assistant judges and principal sudder ameens to their superior civil judge. But as regards those from the sudder ameen at Sirsee, it should be provided that an appeal will lie to the assistant judge at Honore, and not to the civil judge at Mangalore, to whom only a special appeal should lie from the decision of that Sudder Ameen.

29. The

29. The Sudder Adawlut entirely concur in opinion with the Law Commission that general questions of law or usage, such as special appeals frequently involve, should be decided by the highest tribunal; but the practicability of attaining this desideratum must depend on the working power of that court being made adequate to this labour, and on the arrangements made in the lower courts for the decision of regular appeals.

30. At present special appeals to the Sudder Adawlut are limited to original suits decided by the 12 zillah judges, or such original suits, exceeding 1,000 rupees, as may be decided by the nine auxiliary courts and the three principal sudder ameens. It is now proposed to transfer from the 12 judges of the four provincial courts to the three judges of the Sudder Adawlut, instead of to the 18 civil judges to be substituted for the provincial court, all special appeals from original suits unlimited as to the minimum value, which may be passed by the 13 assistant judges, 10 principal sudder ameens, 34 sudder ameens, and 100 moonsiffs.

31. For the last ten years the number of appeals of every description filed and disposed of by the Sudder Adawlut at Madras, has never on an average exceeded 12 per annum, the greatest number decided in any one year having been no more than 22. The number of suits on the file of the Sudder Adawlut may therefore be safely augmented to a considerable extent, especially under the new division of labour proposed by the Law Commission amongst the judges. But the judges of the Sudder Adawlut fear that, with every exertion on their part, the Legislature will overrate their powers as regards special appeals, if they estimate each of the three judges as capable of performing duty fourfold greater than that which has hitherto devolved on each judge of the four provincial courts.

YEARS.	Appeal Suits Filed.	Appeal Suits Disposed of.
1830	8	18
1831	9	14
1832	8	8
1833	5	11
1834	6	7
1835	15	7
1836	18	6
1837	12	22
1838	12	10
1839	18	9
TOTAL	111	112
Average	11 and a fraction	11 and a fraction

32. Accordingly, until experience shall have enabled the Government to ascertain the result of the proposed changes, the Sudder Adawlut think it will be prudent, as above suggested, to extend their admission of special appeals to suits originally decided by the 13 assistant judges, 10 principal sudder ameens, and 34 sudder ameens alone, and to such only of those originally decided by the 100 moonsiffs, as may have been decided in regular appeal by the 18 civil judges.

33. Under the foregoing modifications the Sudder Adawlut are prepared to support the changes proposed for the improvement of the civil judicature in the letter from the Law Commission, from paragraph 24 to 33 inclusive.

34. The above remarks apply chiefly to cases of special appeal involving general questions of law or usage. But it has occasionally been usual under this presidency to admit special appeals from decrees passed upon a regular appeal, which on their face appear to be contrary to or at variance with the evidence upon which they profess to be based, in the same manner that new trials are granted in England. This is done on the principle that a decree contrary to evidence is contrary to judicial precedent. The judges think, in lieu of admitting a special appeal to the Sudder Adawlut in such cases, it will be preferable, in such of them as originate in the decrees of district moonsiffs, that the civil judge should invariably refer the regular appeal to his assistant judge or principal sudder ameen, so that the special appeal should come before himself.

35. The judges are of opinion with the Law Commission, that the highest importance attaches to the suggestion contained in para. 60 of their letter, "which authorises a judge, if, on hearing a petition appeal, he is of opinion that no ground has been shown to impugn the correctness or justice of the decision or order appealed against, to confirm the same without requiring the attendance of the opposite party, and without a revision of the whole proceedings," which the Law Commission proposes to confine to the courts of Sudder Adawlut and of the civil judges.

36. The Sudder Adawlut think that this arrangement will go a great way effectually to repress groundless appeals, without any risk of checking such as are justly founded, and will place upon the present too unlimited right of regular appeal a wholesome and much wanted restraint, calculated to save the

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time of our tribunals from being uselessly occupied in fruitless investigations, and to relieve the people from their present difficulty in obtaining the execution of right judgment in their favour.

37. Numerous regular appeals are now preferred merely to gain time, and to defer enforcement of the lower court's decree until native ingenuity can devise means to frustrate its execution by the fraud, forgery, and false mortgages hatched in the very precincts of our courts of justice, and it frequently happens that a decree no more confers the property it adjudges than a mere piece of waste paper.

38. In the register's letter of the 20th April last, the Sudder Adawlut submitted to Government a statement, No. 9, accompanying it, of which the following is an abstract, showing the number of decrees fully executed as contradistinguished from those executed only in part for the first half-year of 1839:

		AMOUNT.		
	Decrease.	Decreed.	Recovered.	Relinquished.
Executed fully -	6,344 -	273,492	269,614	12,906
Ditto in part only	3,200 -	290,913	47,478	Due, unrecovered. 242 718
Total - -	9,544 -	564,405	317,092	242,718

39. Lamentable experience has thus proved that in India judicial duty begins rather than concludes with the decision. One-third of the decrees, to the amount of nearly one-half of the amount adjudged, remain after the decision unexecuted. Indeed every contrivance on the part of perhaps the most ingenious and persevering people in the world, is at once set at work, so soon as the decree is passed, to thwart execution, and it is most difficult to discover the clue by which to trace to its origin the native chicane set on foot for this purpose, under the multiform shapes in which it arrays itself. Under such circumstances, experience has shown, that to throw upon any single tribunal the execution of the decrees of the whole of the higher and lower courts is unadvisable; for it would transfer perhaps the most arduous and important inquiries in the judicial department from the officer whose personal experience of the merits and details of each case, and knowledge of the individual characters of each party, enables him at once to detect fraud, to a stranger superintending an inferior tribunal deprived of all these advantages; and a little adroitness on the part of a venal clerk in one of the lowest courts might, under such a system, suffice to nullify the most elaborate judgment of the highest tribunal. Added to this, the very division of labour in the performance of this most arduous duty amongst the respective tribunals will far more aid the speedy execution of decrees, than if the whole were thrown upon a single inferior court, which, the lower it descends in gradation, will be the more crippled in its establishment, and less able, without the entire interruption of its proper judicial functions, to perform the very important work in question. For these reasons, except the decrees of the Court of Sudder Adawlut, which should be executed by the civil judge, the decree of every civil tribunal should, in the opinion of the Sudder Adawlut, be executed by the court which passes the decree; and for this purpose a single nazir with a deputy should be attached to each court, whose duty it should be to execute all decrees whatever under the particular orders of the respective authorities who may pass each, whether it be the civil or assistant judge, the principal sudder ameen, or the sudder ameen. In the detached courts a separate nazir must, of course, be attached to each for the same purpose.

40. The Sudder Adawlut have no objections to offer against the arrangements proposed by the Law Commission from paragraph 36 to 44 inclusive of their letter.

41. In deciding on the measures discussed by the Law Commission from para. 45 to 47 of their letter, it is to be borne in mind that the Supreme Government have recently objected to extend the jurisdiction of the Governor's agent at Vizagapatam, that the Law Commission appear to consider "the present arrangement is not intended to be permanent," and that this court has uniformly

uniformly objected to the transfer to the authority of the Governor's agents of any except the hill tracts in Ganjam and Vizagapatam. The change now to be made for the administration of justice in the long narrow strip of country upon the sea-coast, not included within their jurisdiction, ought therefore, to have reference to the plan contemplated as ultimately to be generally established, rather than to the temporary expedient of such agency.

42. Bearing this in mind, the Sudder Adawlut are unable to suggest any arrangement preferable to that proposed in para. 45 of the letter from the Law Commission, and the accompanying statement, No. 2, therefore, contemplates a sessions judge alone at Chicacole, with two principal sudder ameens detached from him at Itchapore and Vizagapatam respectively, the civil and sessions judge being vested in the talooks around Chicacole, with their powers as well as his own.

43. Should the government take this opportunity of replacing under the code the plains, especially those attached to the zemindary of Vizeanagram, the principal sudder ameen at Vizagapatam might change places with the civil and sessions judge at Chicacole.

44. It will certainly be requisite in Canara to retain the extra assistant to the civil judge appointed under Regulation VII. of 1809, alluded to in para. 49 of the letter from the Law Commission; and the statement, No. 2, provides for this accordingly.

45. With respect to the Court of Sudder Adawlut itself, the judges entirely approve the suggestions contained in para. 59, 60, 64, and 65 of the letter from the Law Commission; and, in order to make a division of labour such as the new system will render indispensable, they have recently passed the order of which a copy is annexed.

46. It remains only to notice the financial result of the proposed arrangements as discussed by the Law Commission, para. 50 to 58 in their letter.

Financial Results.

The Sudder and Foujdaree Adawlut annex a statement, No. 3, showing the probable financial result of the arrangements proposed by them:—

To be a saving of rupees - - - - - -	2,48,702	6	–
Falling below that calculated on by the Law Commission of	2,62,000	–	–
By only rupees - - -	13,297	10	–

The Law Commission, in their estimate of the present establishment, supposed it to include four, whereas it includes only three principal sudder ameens; namely, those at Sirsee, Itchapoor, and Honore, the court of the principal sudder ameen at Cumbum having been abolished some time ago.

In the proposed establishment the Sudder Adawlut suggest an increase of the assistant judges from 12 to 13, two of these being on the increased allowance of rupees 1,750 per mensem; the reduction of the principal sudder ameens from 12 to 10; and instead of 42 sudder ameens, as estimated by the Law Commission, they think that 34 will suffice, as shown in the statement No. 2.

Except for the Tooloovoo language, spoken in a considerable portion of the western coast, and for the Oria, used only under the Governor's agent at Ganjam, it is concluded that all translations will be executed at the presidency. In addition therefore to the saving by the abolition of the provincial courts establishment, a reduction may be made in the native judicial establishments of the subordinate courts in the interior, to the extent of rupees 1,652 per mensem, as shown in the statement No. 4. How much of this establishment will be required for translation by the Sudder Foujdaree Adawlut experience alone can show. But

The following is the amount of the civil and criminal establishments in the courts at present:

	Rs.	as.	p.
Rajamundry	906	12	–
Malabar	1,320	4	–
Madura	998	4	–
Salem	985	–	–
Nellore	1,072	–	–
Combacoum	987	4	–
Bellary	1,028	4	–
Cuddapah	1,090	4	–
Assistant Judge, 218 8 – Canara	1,162	–	–
Chingleput	989	12	–
Chittoor	1,186	12	–
11	11,726	8	–
Average for a Zillah Court	1,066	–	–

Auxiliary Court of—			
Coimbatore	579	4	–
Tillicherry	655	12	–
Vizagapatam	645	–	–
Cochin	466	–	–
Tinnevelly	492	–	–
Trichinopoly	555	8	–
Guntoor	592	–	–
Cuddalore	704	–	–
Masulipatam	591	12	–
9	5,281	4	–
Average for an Auxiliary Court	586	13	–

Principal Sudder Ameen's Court of Sircy	270	–	–
Itchapoor	414	8	–
Honore	568	12	–
3	1,258	4	–
Average for a Principal Sudder Ameen's Court	417	12	–

to prevent any under calculation of it, the full amount is estimated and entered as transferred to it in the last item contained in the statement No. 3.

By the proposed abolition of futwahs also, all Persian moonshees and Persian writers in the interior may be dispensed with; accordingly, the Sudder Adawlut, with reference to these reductions and to the reduced work for English writers in fair Company trials and appeals, propose to fix the judicial establishments in the interior on the reduced scale shown in the statements Nos. 5 and 6 respectively, according as an assistant judge or a principal sudder ameen may be attached to the civil and sessions judge.

Statement No. 3 shows the result of such establishments, both as regards the 10 stations where, according to No. 2, an assistant will be stationed with the civil and sessions judge, and the seven other stations, where No. 2 shows that the aid of a principal sudder ameen will suffice. In regard to Chicacole, where alone the civil and sessions judge will be solitary, the judges have estimated, in No. 3, the same establishment as now suffices for the auxiliary court at Vizagapatam, and they have estimated the establishments for each of the proposed detached courts at their present amount, except that they have taken that for the court proposed to be fixed at Vizagapatam at the same amount as that for Itchapore, and have given the sudder ameen to be detached at Sersee an establishment of rupees 100 instead of 45 rupees per mensem.

It is very likely that, when practically introduced, these establishments will require to be considerably modified, to be increased at some stations and decreased at others, so as to suit local circumstances and peculiar wants; but the aggregate will suffice to cover the expenditure required, and such modifications in detail, it is presumed, will be best left, on the introduction of a new system, to the discretion of this court, in communication with their subordinates; the present object of these estimates is merely to give the Government a general notion of the aggregate financial result of these arrangements.

Though the reduction will be generally as stated in the enclosure No. 3, it is likely to be ultimately still greater. The Sudder and Foujdaree Adawlut have purposely excluded from their present estimate any reduction arising from the discontinuance of the law officers in the four provincial courts, for it is presumed that these officers, like the members of the civil service who may be transferred to the new offices, will personally retain their present superior salaries, even if absorbed as sudder ameens; some of them it is likely may apply for pensions. But amongst them there are individuals of much ability and intelligence still likely to be useful in the public service.

The judges are of opinion that two Mahomedan and three Hindoo law officers in the Court of the Sudder Adawlut will suffice for answering all questions on Mussulman and Hindoo law which may be referred to the presidency from the several provinces, and one of the three Hindoo law officers should be specially versed in the Hindoo law peculiar to the western coast, or that of inheritance in the female line.

Ordered that extract from these proceedings be sent to the chief secretary to Government, for the purpose of being laid before the Right hon. the Governor in Council.

(True extract.)

(signed) *W. Douglas*, Reg^{r}.

Acting First Judge, Northern Division, with Honore, Sircy, and Tillicherry. Acting Second Judge, Southern Division, with Calicut and Cochin. Acting Third Judge, Centre Division, with Mangalore.

Order of the Court.

1. The duty of revising the monthly criminal returns and quarterly and half-yearly civil returns from the several zillah and provincial court stations is now divided amongst the three judges of this court, as noted in the margin; when the new system is introduced, it will admit of still more equal division by each judge taking six of the 18 stations and two of the detached ones, the seventh detached one being added to one of the three.

2. It is resolved that the same division of labour do take place as regards the calendars and all miscellaneous petitions.

3. Except the correspondence, which will continue to be considered by all the judges, and the referred trials and civil appeals, which will continue to go to the several judges in rotation, as they become ready for decision, every other paper in each box will under this plan have, in pencil, the name of the judge upon it who is to decide on it.

4. When the judge vested with the duty proposed in paras. 1 and 2 agrees with the court below, no other judge of this court is to interfere; but when he differs, the register is to note in pencil, on the back of the paper or draft, the cases or paragraphs requiring confirmation by a second judge.

5. Such papers of the first to go to the second, of the second to the third, and of the third to the first judge.

6. In the same way the register is to note all general questions or construction of Regulations by any single judge, that these may be considered by all the judges before they are issued.

7. The acting third judge has proposed to delegate to the register in the first instance part of the duty specified in paras. 1 and 2.

8. The court concur with the acting second judge in opinion, that each judge can of course avail himself of such aid as he may think proper; but that it is preferable that the judge himself should, if possible, perform it. The system now proposed however, will allow each judge in this respect to give such orders as he may deem proper to the register, respecting the particular division of which he undertakes the labour.

(True copy.)
(signed) *W. Douglas*, Register.

Minute.

Para. 1. Agreeing as I do generally in the views expressed in the proceedings of the Sudder and Foujdaree Adawlut of the 14th ultimo, on the subject of the judicial changes recommended in the Report of the Law Commissioners, dated the 2d of August last, I shall not have occasion to write in any detail on the subject.

2. Some years ago I thought that it would not be safe to try persons accused of heinous offences without the intervention of a committing officer, but I have since changed my opinion.

3. Experience has shown that it is the double investigation, first by the criminal judge, and again, oftentimes at a distant period, by the court of circuit, that affords the opportunity of tampering and buying of witnesses, and that has given rise to a great proportion of the perjury which of late years has been so discreditable to our courts.

4. It is in a great measure the dread of a second journey, and sometimes of a third, and even of a fourth journey to the criminal court, which induces the people on some occasions to deny all knowledge of a case, and which in many instances has caused the ends of justice to be defeated.

5. Our experience of quarterly sessions held at stations where the committing officer and the judge holding the trial are both on the spot, shows that considerable delay still takes place even under such circumstances, and there can be no question therefore, that the plan proposed by the Law Commissioners would afford only a partial remedy of the great evil which has been so much and so justly complained of.

6. As long as this double trial is required, the delays and consequent tampering with witnesses and obstructions to the due administration of justice will continue,

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continue, and I am quite satisfied that there will be less danger of injustice in the trial of the prisoner at once before the tribunal competent to try him, than in continuing the present system of previous examination of the case by a committing officer, vested only with preliminary powers of investigation.

7. I object, however, to the proposition contained in the 7th paragraph of the proceedings of the Sudder and Foujdaree Adawlut of the 14th instant, to authorise the sessions judge to pass sentence in cases which have not been investigated by that officer. The exercise of such a power would, I think, be highly objectionable, and it would lead to the employment of the lower judicatories in taking evidence for the higher, in cases which should be investigated exclusively by the latter.

8. With reference to the 9th paragraph of the above quoted proceedings of the Sudder and Foujdaree Adawlut, it appears to me that as long as the use of the Mahomedan law is continued, it will be necessary to retain a law officer for each court, and the proposition that he shall continue to be associated with the sessions judge upon the trial of persons, and for reference to be made to him on questions of law, is unobjectionable. But the futwah is a great clog and a great source of delay, and though certainly, in some instances, it may be a salutary check upon a negligent judge, the continuance of it is not now absolutely necessary in consequence of the facilities which have been afforded by the publication of circular orders, by the improvement which has taken place in the administration of criminal justice, and by the strict supervision which is now exercised by the Foujdaree Adawlut.

9. The futwah should, therefore, I conceive, be dispensed with, as recommended by the Sudder and Foujdaree Adawlut.

10. I consider the plan of having distinct and separate courts at each station objectionable, because of the double authority and control it will involve, because of the difficulty there would be in making a fair division of labour, which must always depend upon local circumstances, because of the expense it will occasion in providing at most of the stations new buildings for such separate courts, and because the business of the whole zillah will be much better conducted under one acknowledged head than under divided superintending authorities, who would be continually liable to come in collision with each other.

11. It will be preferable, I think, that there should be a civil and criminal court at each Sudder station, with the civil and sessions judge at the head, and with subordinate judicatories attached, as recommended by the judges of the Sudder and Foujdaree Adawlut.

12. With reference to the conclusion of the 28th paragraph of the proceedings of the Sudder Adawlut, dated the 14th ultimo, there can be no necessity for requiring persons to proceed to Mangalore when the special appeals from the sudder ameen of Sircy can be tried just as well by the assistant judge of the proposed superior grade at Honore.

13. I entirely agree with the Sudder Adawlut in thinking that every court should issue its own order for the execution of its decrees, and should dispose of all miscellaneous petitions respecting such execution, subject of course to an appeal to the superior court.

14. The establishments proposed by the Sudder and Foujdaree Adawlut will require modification, and I am not of opinion that the number of law officers in the Sudder Adawlut need exceed one Mahomedan and two Hindoos.

Fort St. George, 3 February 1841. (signed) *John Bird.*

(True copies.)

(signed) *H. Chamier,* Chief Secretary.

MINUTE by the Honourable *W. W. Bird*, Esq. dated the 27th March 1841.

Legis. Cons. 12 April 1841. No. 15. Letter from the Government of Fort St. George, dated the 23d February 1841, on the changes in the Madras Judicial System proposed by the Law Commission.

THESE papers must of course be forwarded to the Law Commission in order that the latter may take into consideration the sentiments expressed by the Government of Fort St. George, and by the Sudder and Foujdaree Adawlut, on the changes proposed to be made in the Madras judicial system.

The Madras authorities are of opinion that the changes proposed by the Law Commission do not go far enough, that the mere abolition of the provincial courts and the substitution of a civil and sessions judge at every zillah station, in addition to the civil and criminal courts already established, will go but a very little way to remedy the evils so justly complained of, and that the changes in question, without doing away to a sufficient extent the inconveniences to which parties are exposed by repeated attendance at the different courts, would involve considerable expense by rendering necessary new buildings at most of the stations, and would lead to much clashing of authority.

Instead, therefore, of having a civil and sessions judge, together with a civil and criminal court at each station, exercising respectively the powers already vested in the civil and criminal courts, and in the courts of appeal and circuit, there should be only one civil and criminal court at each sudder station, with a civil and sessions judge at its head, and that instead of the present civil and criminal courts, subordinate judicatories should be established where necessary, to which cases might be referred for decision by the civil and sessions judge, as circumstances may require.

By this arrangement one intermediate court would be got rid of. The magistrate and the district police, instead of having to bring before that court all cases which they cannot dispose of themselves, to be afterwards sent on to the sessions judge, should the offence be sufficiently serious, would forward them at once to the latter authority, and by this means one set of examinations in all the gravest cases would be dispensed with, to the great satisfaction of the community at large, whose attendance would be proportionately abridged, and to the vast improvement of the public administration, which the fraud and perjury occasioned by the delays in question have brought so much into disrepute.

These suggestions appear to me to be important, and I would recommend them strongly for adoption to the Law Commissioners. I would recommend also, with a view to the relief of the session judges, that the powers of the magistrates be increased. Although the covenanted servants by whom the latter office is held at Madras are often of the oldest standing, the power which they exercise in regard to punishment is not greater than, in Bengal, is ordinarily entrusted to an assistant. They might, I think, be empowered to punish to the extent at present vested in the criminal courts, which, according to Sect. 7, Reg. X. 1816, of the Madras Code, amounts to imprisonment not exceeding six months, with corporal punishment not exceeding 30 rattans, in cases of theft, or in other cases, with a fine not exceeding 200 rupees, commutable, if not paid, to a further period of imprisonment not exceeding six months; so that the entire period of imprisonment under the sentence of a criminal judge in no instance exceeds one year.

To keep up a class of tribunals for the purpose of hearing cases in which no greater punishment can be awarded than that above specified, would seem to be superfluous, and it has, I think, been satisfactorily provided by the Madras authorities, that to make them the channel of forwarding the graver cases for trial to the sessions judge would perpetuate a great proportion of the manifold evils, for the removal of which the abolition of the provincial courts has been deemed on all hands indispensably necessary.

In regard to the futwah, which is the only other important point on which the Madras authorities and the Law Commission are at variance, I do not think that we can at present go farther than by Act No. 1 of 1840 we have already gone, the question being one which concerns Bengal as well as Madras, and cannot conveniently be dealt with until the code of procedure comes under consideration. In the meantime, to avoid the necessity of making translations for the convenience of the Mahomedan law officers, no one should be appointed to interpret the law in a district who is not sufficiently acquainted with the lan-

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guage in which the proceedings of the court he is attached to are usually conducted.

The remaining points of difference do not, in the present stage of the proceedings, require any particular observations.

(signed) *W. W. Bird.*

Legis. Cons.
12 April 1841.
No. 16.

(No. 47.)

From *T. H. Maddock*, Secretary to the Government of India, to the Indian Law Commissioners.

Gentlemen,

Legislative Dept.

I AM directed by the Right honourable the Governor-general of India in Council, to transmit to you the accompanying copies of a letter, No. 173, from the chief secretary to the government of Fort St. George, dated the 23d February, and of its enclosures, on the proposed changes in the judicial system of the Madras presidency, also copy of a Minute recorded by the Honourable Mr. W. W. Bird, and dated the 27th ult., in the sentiments contained in which his Lordship in Council generally concurs.

2. A copy of a despatch from the Honourable Court of Directors, No. 2, dated the 20th January 1841, also accompanies this, from which you will perceive that the Honourable Court attach particular importance to the speedy disposal of the whole question, and I am instructed urgently to request that no time may be lost by you in completing your part of what remains to be done in the matter.

I have, &c.

Council Chamber,
12 April 1841.

(signed) *T. H. Maddock*,
Secy. to the Govt of India.

Legis. Cons.
1 November 1841.
No. 19.

(No. 176.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *W. Elliot*, Esq. Acting Secretary to Government of Fort St. George.

Sir,

Legislative Dept.

WITH reference to the correspondence which has taken place on the subject of the abolition of the provincial courts of the presidency of Fort St. George, now under the consideration of the Supreme Government, I am directed, by the Right honourable the Governor-general in Council, to request that all appointments to offices, which have been recommended by the Law Commissioners to cease, may be made provisionally, and with an understanding that in the event of the abolition of those offices the persons provisionally appointed will not be entitled as incumbents to carry with them after such abolition the salaries of the abolished offices.

2. His Lordship in Council further requests, that these instructions may be considered as applicable to all appointments to such offices made since the date of the last despatch on the subject from the Governor of Fort St. George to the Supreme Government.

I have, &c.

Fort William,
1 November 1841.

(signed) *T. H. Maddock*,
Secy to the Govt of India.

Legis. Cons.
29 November 1841.
No. 1.

From the Indian Law Commission to the Right honourable *George* Earl of *Auckland*, G. C. B., Governor-general of India in Council.

My Lord,

ON the 22d April we had the honour to receive Mr. Secretary Maddock's letter, dated the 12th of that month, and having taken into consideration the papers therewith transmitted to us relating to the proposed abolition of the provincial courts of appeal and circuit in the Madras presidency, we now submit to your Lordship in Council the observations that have occurred to us upon

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upon those papers, with reference to our report, dated 21st August, which is discussed in them.

2. The object is to abolish the provincial courts, and to set up others in their stead calculated to do their work more expeditiously, and with less inconvenience to the people, and also at a less cost to the state.

3. The plan recommended in our report is to establish 18 superior zillah courts, with a single judge to each, to take up the whole civil and criminal jurisdiction of the provincial courts, together with the appellate jurisdiction exercised by the zillah and auxiliary courts as at present constituted, and to organise a set of subordinate but independent zillah courts by continuing the courts already established in lieu of zillah courts in some districts*, under assistant judges and principal sudder ameens, and by establishing others of the same class in all the rest, with the same jurisdiction, civil and criminal, as heretofore, except with respect to appeals from sudder ameens and district moonsiffs.

1 To have jurisdiction over two districts, Ganjam, and Vizagapatam, a large part of which is excluded from the jurisdiction of the ordinary courts.
17 Each to have jurisdiction over one district.
18 Courts; 19 districts.

4. In framing this plan we were influenced by the consideration that it was inadvisable at the present juncture, when the whole system of judicature and judicial establishments in India is under revision, in order to a general reform and assimilation, to propose any change but what appeared necessary to effect the particular object in view; we therefore purposely preserved the existing system of judicatories and procedure, and we modified the jurisdiction and the relation of the courts to each other only so far as seemed to be fitting with reference to the new location of those of the superior class substituted for the provincial courts.

Report, 21 Aug. p. 11.

5. The Madras government object to the establishment of distinct and separate courts at each station, and think "it will be preferable that there should be a civil and criminal court at each sudder station, with the civil and session judge at the head, and with subordinate judicatories attached, as recommended by the judges of the Sudder and Foujdaree Adawlut."

From Chief Secretary, 23 Feb. 1841, p. 4.

6. The Honourable Mr. W. W. Bird, who concurs in the sentiments expressed by the Madras government on this point, supposes that the subordinate judicatories are to be established where necessary, and that cases are to be referred to them for decision by the civil and session judge as circumstances may require.

Minute, dated 27 March 1841.

7. But this is not the intention of the judges of the Sudder and Foujdaree Adawlut. On the contrary, with respect to civil judicatories, they intend that the assistant judges and principal sudder ameens shall have a defined and perfectly distinct jurisdiction in original suits, which they are to receive and file without the intervention of the judge. They are to proceed in the trial of these original suits and of appeals referred to them by the civil judge in all respects as if holding distinct courts, issuing and enforcing their own process at every stage, and finally executing their own decrees; and not subject, as far as appears, to any interference on the part of the judge, which he would not exercise in his appellate character.

Proceedings, p. 22.

Proceedings, p. 25.

8. The civil jurisdiction and procedure then of the assistant judges and principal sudder ameens, as subordinate functionaries of the civil judge's court, according to the plan of the Sudder Adawlut, will differ in no respect from what we proposed for them as holding separate and distinct courts.

9. With respect to criminal judicature, it is said, that "subject to certain modifications the Foujdaree Adawlut entirely approve of the suggestions contained in the letter from the Law Commission, from paras. 12 to 23 inclusive." In para. 12 of that letter is proposed the plan of having separate and distinct civil and criminal courts at each station, but none of the modifications referred to relates to the constitution of the courts according to that plan. On the contrary, the general tenor of the observations of the Foujdaree Adawlut upon criminal

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* In eight of the 19 districts under the Madras presidency, zillah courts have been abolished under Regulation I. of 1821.

In seven of these, courts have been established under assistant judges vested with the same jurisdiction as zillah judges, under Regulations I. & II. of 1827. In one, a court has been established under a principal sudder ameen, vested with the same jurisdiction, except in special cases, under Regulations VII. & VIII. of 1827. In the remaining 11 districts zillah courts still exist. In two of these, auxiliary courts have been established at detached stations in aid of the zillah courts; viz. in one district (Malabar) two courts under assistant judges; in the other (Canara) two courts under principal sudder ameens.

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p. 11.

criminal judicature implies that they contemplated the courts of the assistant judges and principal sudder ameens as separate and distinct judicatories. Accordingly it is proposed, "that the returns of the assistant judges and principal sudder ameens shall be forwarded, as at present, direct to the Foujdaree Adawlut," and that "direct communication shall exist between the session judge, assistant judge, and principal sudder ameen respectively, and the magistracy or police, in regard to any further evidence that may be required in the cases under trial." With respect to their jurisdiction, it is intended that all cases shall be sent to them which "they will be competent to try and pass sentence on, under the plan proposed by the Law Commission."

p. 5.

The cases are to be sent to them indeed by the session judge, but that officer is not to exercise any discretion in the matter.

From Chief Secretary to Government of Madras, p. 4.

The proposed constitution of these courts as separate and independent judicatories according to the regulations of 1827, modified as suggested in our report, is objected to "because of the double authority and control it will involve, and because of the difficulty there would be in making a fair division of labour;" and again, because the business of the zillah will be "under divided superintending authorities, who would be continually liable to come into collision with each other."

We do not, however, see any ground for these objections, since we propose to vest the superintending authority exclusively in the judge of the zillah, and in order to make it effectual and to prevent collision, we provide that appeals from sudder ameens and district moonsiffs, which now lie to the assistant judges and principal sudder ameens, shall under the new arrangement be admissible only by the civil judge, and shall not come before the assistant judge or principal sudder ameen but by reference from him; and though the assistant judges and principal sudder ameens are to refer to their sudder ameens a proportion of the original civil suits filed in their courts, yet having referred them they will have nothing further to do with them. If parties are dissatisfied with the proceedings, orders, or judgments of the sudder ameens, in such cases they must apply for redress to the civil judge. The assistant judge and principal sudder ameen, according to our plan, having their attention confined to the business of their own courts, and their duty being clearly defined, we can hardly conceive any occasion to bring them into collision with the judge. Such collision, we apprehend, would be more likely on the plan of the Sudder Adawlut, for although it is intended that the jurisdiction and procedure of these functionaries should be the same as we propose for them as holding distinct courts, yet considering them as subordinate officers of his court, the judge might interfere with their proceedings and attempt to control them extra-judicially and irregularly, and so give occasion for dispute and controversy between them.

* Regulation III. of 1833, Sect. 2.

With respect to criminal cases referred to sudder ameens by assistant judges and principal sudder ameens, we are of opinion that the authority to overrule * the judgments of those functionaries in such cases should be vested in the session judges, as the appellate authority in civil cases decided by them is proposed to be vested in the civil judges.

And with respect to the supposed difficulty of making a fair division of labour, it is only necessary to observe that the division is intended to be made once for all by defining the jurisdiction of the several courts, and it will be the same under either plan.

Our plan is objected to also "because of the expense it will occasion in providing at most of the stations new buildings for the several courts." It is not explained why new buildings will be more necessary if the court of the assistant judge or principal sudder ameen is distinct from the civil and session court, than if with a distinct jurisdiction the assistant judge or principal sudder ameen is attached to that court. The same accommodation would be required in both cases, and the courts may be perfectly distinct though held under the same roof.

And so with respect to the establishment, the assistant judge holding a distinct court, will not need a greater number of servants to assist him in the transaction of his business than an assistant judge attached to the civil and session court exercising the same jurisdiction and observing the same forms of procedure. A certain number of gomashtahs, writers, and peons must be always at his disposal, and if there be a general list of ministerial officers for the departments

departments under the civil and session judge and the assistant judge, in practice it will be found necessary to make a division, and to appoint some of those officers to one, and some to the other permanently, just as if there were a separate list for each. If one nazir will serve for the execution of the process of both the civil and session judge and the assistant judge attached to his court, but exercising a distinct jurisdiction, there is no reason why he should not serve equally for the execution of the same process when the courts of the civil and session judge and of the assistant judge are separate. So also with respect to the serishtadar, record keeper, &c. But here will be occasion for collision, and whether the assistant judge is to be attached to the civil and session court or not, if he is to exercise a distinct jurisdiction and to execute his own process as proposed, it would seem to be advisable to give him a separate establishment, even if it should involve some more expense, which does not appear certain. Thus in Bengal, though the principal sudder ameen has not a distinct jurisdiction, but is an assistant to the judge for the trial of such suits as the latter may refer to him from his own file, a separate establishment is provided for him.

On the whole, we cannot perceive that any advantage would be gained by making the assistant judge or principal sudder ameen, as the case may be, subject to the civil and session judge in the manner proposed, while it is intended that he should have a distinct jurisdiction and be vested with powers to proceed in the exercise of that jurisdiction independently. It is having a distinct jurisdiction and independent authority to serve its own process and execute its own decrees or sentences that constitutes a distinct and independent court. And as we find that in these essential points there is no difference between our plan and that of the Sudder and Foujdaree Adawlut, we think it desirable to avoid the anomaly of placing the judge of the inferior court in an undefined subjection to the judge of the superior one, by which, as far as we can see, no end can be served.

It is a different question whether it would not be better to have in each zillah a single court, constituted as Mr. W. W. Bird supposes was intended, instead of two separate and distinct courts; that is to say, one court vested with the whole jurisdiction of both the provincial courts of appeal and circuit, and the civil and criminal courts now existing in the districts to be administered by a judge aided, as there may be occasion, by European or native assistant judges, to try such cases as the judge may think proper to refer to them.

Mr. Bird recommends this plan; but with a view to the relief of the session judge, he at the same time proposes to transfer to the magistrate all the cases which he supposes are now cognizable by the district criminal courts, viz. the cases referred to in Section 7, Regulation X. of 1816, punishable by imprisonment for six months, with corporal punishment not exceeding 30 rattans, in cases of theft, and in other cases, with a fine not exceeding 200 rupees, commutable to imprisonment for a further period of six months. The powers of the criminal courts, however, have been extended since 1816, and they are now authorised, for particular offences, to pass sentence of imprisonment for two years, with hard labour. We do not know whether Mr. Bird would give this extended power to the magistrate.

Regulation VI. of 1822.

We have already explained that, in forming our plan for the abolition of the provincial courts, we purposely abstained from entering into the consideration of any changes of the judicial system prevailing in the Madras presidency but what were necessary to effect the particular object in view. We still think it inexpedient, with reference to the work we have in hand, the organisation of a uniform system of judicature and procedure for all India, and while it is still undetermined what the future system shall be, to introduce any changes for which there is not a pressing exigency. The changes we are now considering would essentially alter the existing system, and as they do not appear to us to be necessary for the present purpose, we do not consider it advisable to adopt them.

We submit this opinion without reference to the merits of the changes proposed, but we think it proper at the same time to offer a few remarks upon them.

First, we would remark, that while the tendency of our recent legislation has been to confine the civil jurisdiction of the principal European judges in the

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the mofussil to appeals by the plan under consideration, not only would the civil judges have the original jurisdiction of the provincial courts in suits above 5,000 rupees, which, to avoid change, we propose to leave to them for the present, but also the whole original jurisdiction of the existing courts under zillah judges, assistant judges, and principal sudder ameens, in suits under 5,000 rupees. All such suits would be addressed to and filed by the civil judge, and such only as he could not himself investigate, he would refer to the assistant judge or principal sudder ameen attached to his court.

In the Madras presidency it is to be remembered, the assistant judges and principal sudder ameens now exercise an independent jurisdiction in original suits within the limits subject to them, corresponding to that of the judges of the zillah courts. Of this independent jurisdiction the measure proposed would deprive them, and they would be converted into referees*.

With respect to the criminal department, under the Madras system, the jurisdiction of the magistrates is extremely limited, and their power of punishment generally is, as Mr. Bird observes, not greater than, in Bengal, is ordinarily entrusted to an assistant; their chief duty is the superintendence of the police. The magistrate and superintendent of police is also collector of revenue. In constructing the present system, it was thought that the magistrate could not give sufficient attention to the business of revenue and police if a more extended jurisdiction were committed to him. His judicial authority therefore was confined to petty cases, and of these he ordinarily takes cognizance only of such as are beyond the jurisdiction of the heads of police. The following statement shows the number of persons accused of petty offences before the magistrates, joint magistrates, and assistants, and before the heads of police respectively, and the number convicted and punished in the second half of 1838 and the first half of 1839 :—

	Magistracy.		District Police.	
	Number Accused.	Convicted and Punished.	Number Accused.	Convicted and Punished.
Second Half of 1838 -	3,878	1,294	55,226	14,399
First Half of 1839 -	3,656	1,363	53,108	13,412

The magistrate, under the existing system, is also relieved in a great degree from the duty of making preliminary inquiries in cases cognizable by the criminal judges and higher tribunals; for the most part such cases are sent direct to the criminal judges by the heads of district police, as will be seen by the following statement :—

MAGISTRACY.					DISTRICT POLICE.			
	Charges Preferred.		Sent to Criminal Courts.		Charges Preferred.		Sent to Criminal Courts.	
	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.
Second half of 1838	283	910	131	395	2,591	7,332	1,732	3,932
First half of 1839 -	33	1,143	174	441	2,249	7,089	1,561	3,829

In their proceedings under date the 2d September 1834, the Sudder and Foujdareel Adwaut expressed their apprehension that from the peculiarly detailed

Mr. Secretary M'Sween to Sudder Dewanny Adawlut, 26 August 1833.

* We observe † that when it was in contemplation to revise the Bengal Regulations relating to the native judges, the Governor-general in Council directed that the principal sudder ameens and sudder ameens should be authorised and required to receive and try all original suits cognizable by them without the intervention of the judge.

detailed nature of the revenue settlements under the presidency of Madras, the collectors had far too much business in the revenue department to admit of their adding to it that part of the duty of the criminal judges, which consists in the preliminary investigation of cases cognizable eventually by the courts of circuit, and their preparation for trial before those courts. If they could not discharge this part of the duty of the criminal judges, neither could they, we conceive, go through the trial of the cases which are now subject to the jurisdiction of the criminal courts, without a very inconvenient and injurious interruption to their other business of revenue and police. The number of persons tried by the criminal courts

In the second half of 1838, we observe, was - -	2,634
In the first half of 1839 - - - - -	2,332
In the year - - - - - -	4,996

Moreover, it is to be borne in mind that, from the offices of collector and magistrate being vested in one person, and from the duties of the collector requiring him frequently to move from place to place, the magistrate's court is by no means so convenient for the people to attend as a court which is stationary; however, such locomotion may conduce to the general advantage, by enabling the magistrate to maintain a more effectual control over the police, and to obtain information which may lead to the detection of crimes, and the correction of abuses by which the people are oppressed.

Lastly, we would remark that it is a question which has been much mooted, and which must be considered and determined before a general scheme for the administration of criminal justice can be settled, whether the officers charged with the superintendence of police should not be altogether divested of judicial authority; and we would submit, that while this question remains undecided, it seems to be objectionable to disturb the Madras system, under which the judicial power of the magistrates is limited, in order that they may be able to give their attention mainly to the management of the police.

Having submitted to your Lordship in Council the reasons for which we do not think it advisable to modify the constitution of the courts of the assistant judges and principal sudder ameens, according to the suggestion of the Sudder and Foujdaree Adawlut, supported by the government of Madras, nor to adopt the essential changes of system recommended in the Minute of Mr. W. W. Bird, we shall now advert to the particular observations and suggestions in the papers before us, which appear to require attention.

With reference to the proposed establishment of a court of permanent sessions in every zillah, for the trial of persons accused of crimes now cognizable by the courts of circuit, it is stated that although this arrangement "will lessen in a material degree the delay previous to trial, it will by no means remedy the existing evil to the extent that its magnitude requires," because of the loss of time that will still be occasioned by the intermediate investigation of the committing officer. It is observed that permanent sessions have been held at the stations of the provincial courts since 1830, and a statement is submitted by the Foujdaree Adawlut of the cases referred to them in 1839, to show that at those stations, notwithstanding this arrangement, the time that elapsed between the arrest and trial of the accused, was on the average 55 days. From this experience it is inferred "that the advantage from the general adoption of the measure thus already partially introduced, will ensue only to the extent of about one-half the result calculated on by the Law Commission."

Proceedings of Sudder and Foujdaree Adawlut, p. 1 to 7. Minute of Mr. John Bird, p. 2 to 6.

We thought that as the great delay which now occurs between commitment and trial would be cut off by the proposed arrangement, the whole period intervening between the apprehension of offenders and their appearance before the judge who is to try them, ought not to exceed 27 days on the average; and looking to the average of three years past, we reckoned that the time saved by this measure would be about 110 days. Now supposing the average of 55 days assumed by the Foujdaree Adawlut, from the experience of one year, to be a correct criterion, there will at least be a saving of 82 days. The result anticipated by the Foujdaree Adawlut is, therefore, by no means so far short of our calculation as would appear from their remark.

Average of three years -	137
Deduct - - -	27
Days -	110
Average - - -	137
Deduct - - -	55
Days -	82

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But we can scarcely admit the average of one year as a just criterion, and it is to be regretted that when the measure in question has been in operation at the stations of the provincial courts during a period of 10 years, the result of it in one only has been stated. The average, we observe, has been drawn from nine cases referred to the Foujdaree Adawlut by the judges holding sessions at the four stations of the provincial courts in 1839, of which six were from one station, and one from each of the other three. The average of these three is 48 days. The time between the apprehension and trial of the accused in each of the six cases from the first station is not given, the shortest was 15 days, the longest 182 days. Now a period of six months is so long a time to be consumed between the initiatory proceedings and the trial, where there is no cause for delay after commitment, that we are led to suppose that in the case referred to, the circumstances were extraordinary, and probably the average ought to be corrected by excluding it on that account. Further, it is to be observed that the referred cases to which the statement submitted by the Foujdaree Adawlut is confined, are considerably less than a fourth part of the whole number tried by the court of circuit.

When, according to their own estimate, there will be a saving on the average of at least 82 days out of the 137 that prisoners are now detained before trial, we cannot agree with the Foujdaree Adawlut, that "the prison intrigue and chicanery which promote recantation, false defences, and perjury in their support, would in no respect be diminished." And we think generally, that their observations as to the inconveniences to which the people are subject in criminal cases before our courts, however just they may be as applied to the present system, would be in a great measure obviated under the proposed arrangement.

There can be no doubt, however, that some time would be saved, and certainly much inconvenience to the prosecutors and witnesses, in the cases tried by the session judges, if they came to them directly from the police or magistracy; and we think that this will be the proper course, when a good system of police under a public prosecutor shall be organised. The plan suggested is to dispense with the intervention of the assistant judge, or principal sudder ameen, in all cases cognizable by the session judges. But it is to be remembered that by this intervention the cases which are sent up by the police, &c. without sufficient proof to support the charges against the prisoners, are prevented from going to trial. We find, on reference to the operations of the criminal courts in cases cognizable by the courts of circuit, that the number of persons discharged for want of evidence is generally greater than the number of persons committed. This plan, under existing circumstances, would therefore at once more than double the number of persons to be tried by the session judges; and they would have a great deal more to do in the cases to be tried from their coming to them without previous preparation by a committing officer. On the other hand, the assistant judges and principal sudder ameens, whose time is in every respect less valuable, would be relieved from a very large portion of the business intended to be assigned to them. The judges, we apprehend, could not do the additional work which would fall to them in the criminal department, without either leaving the civil business in arrears, or transferring appeals in a greater proportion than is desirable to the subordinate tribunals.

	Discharged.	Committed.
First half of 1838 -	765	754
Second ditto -	750	999
First half of 1839 -	1,180	1,168

The question then is simply whether, seeing that not more than half of the cases* sent up by the police and magistracy are found on examination to be supported by evidence which warrants commitment, it is advisable, for the sake of expediting the trial of such cases, to burden the session judge with the investigation of the other half also, by which his valuable time would be so much occupied that he could not give the requisite attention to his civil duties.

If it be determined that all cases cognizable by the session judge shall come to him from the police, without the intervention of the assistant judge or principal sudder ameen, it will be necessary, the judges of the Foujdaree Adawlut observe, "that the session judge should himself perform what may remain to be

Proceedings, p. 6.

* Persons only are mentioned in the statements, but it is presumed that the proportion of cases is about the same.

be done, in order to complete each case for trial;" and they remark; that "the preparation will be more exactly adapted to the trial, both being the work of the same person, who must know better than any other can what parts of the case require further elucidation." If the trial were to be deferred until the case should be completed by such preparation, there would be little relief to the prosecutors and witnesses. But the judges explain that they intend "only what is now often done by circuit judges, and always by criminal judges, sudder ameens, and assistant criminal judges, in cases in which sentence is passed by themselves." And we apprehend that it is not the practice of criminal judges, in cases in which, upon a perusal of the informations received from the police, they think it proper to call for further evidence, to defer the commencement of the trial until such evidence is forthcoming. We suppose, on the contrary, that they enter upon the trial immediately by taking the examinations of the prosecutor and of the witnesses for the prosecution who are in attendance, and allowing them to return to their homes, adjourn the proceedings until the further evidence required is ready. We are of opinion that this is the proper course. With respect to the prisoner's defence, it is ordered that it shall not be recorded until after the evidence for the prosecution has been gone through; under which rule, although the prisoner's witnesses may be in attendance from the first, they must wait unto the end before they can be examined. We think that the courts should have a discretion to prevent this inconvenience.

C. O. Foujdaree Adawlut, 1 August 1835.

The judges of the Foujdaree Adawlut suggest, "that the original informations should be sent up to the judge immediately that they are completed, without waiting, as is now done, for all the parties concerned to accompany them," and that the judge should "communicate direct with the officers by whom the informations are taken," which seems to be a proper arrangement, in order that measures may be taken as early as possible to remedy any defect in the preliminary proceedings, and in the evidence which has been collected by the police.

If, on the other hand, it should be deemed advisable to continue the present process of commitment, in order to prevent the session judge being burdened with the examination of cases sent up by the police on insufficient grounds, we think that some of the delay which now occurs at that stage might be obviated, if the assistant judge or principal sudder ameen were authorised to make the commitment at once, when the charge is borne out by the informations received from the police, and the statements previously made by the prosecutors and witnesses are confirmed on oath before him. When the preliminary investigation has been insufficient, and the informations are incomplete and unsatisfactory, the assistant judge or principal sudder ameen must, of course, take fresh examinations and make further inquiries; but we think that he need not prosecute his investigation further than to satisfy himself that there is probable evidence to sustain the charge, and should then commit the prisoner for trial. The trial should be commenced as soon as possible after the commitment, and should be conducted in the way proposed, on the supposition of the case coming directly from the police.

The Foujdaree Adawlut observe, that the plan of dispensing with the process of commitment "will involve the consequence, that a prisoner once put upon his trial for even the greatest offence, can never again be brought forward for the same crime;" and they remark, that "a greater latitude must therefore be given to the police, as to the period within which proof of the graver crimes is to be completed." But if the judge is authorised to postpone the trial, or to adjourn it from time to time, till the proof which appears to be accessible is obtained, as we suppose is intended, it does not appear to us that it will be necessary to give such further latitude to the police. We do not see, however, why the session judge must necessarily put a prisoner so brought before him on his trial, when, from a perusal of the informations sent by the police, it appears to him, that though they afford strong ground of supicion so far as they go, there is some evidence wanting, and not at present accessible, without which he could not be convicted; in such a case, we think that the prisoner should be discharged without trial, and that his situation in consequence should be just the same as that of a prisoner who, under the present system, is discharged by a criminal court for want of proof sufficient to warrant his commitment.

p. 8.

The Foujdaree Adawlut suggest that "all cases not punishable by the police or magistracy, should go direct from them to the session judge," to be distributed

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buted by him "to the respective authorities, who, under the new plan proposed by the Law Commission, will be competent to try and pass sentence on them, except at the six detached courts, to which the magistracy and police should send such cases as they are competent to decide direct, forwarding to the session judge direct all the grave offences." Even if the process of commitment in cases cognizable by the session judge be dispensed with, it would be better, we think, to make the exception to the above suggestion the general rule, that is, that the magistracy and police should everywhere send direct to the assistant judge or principal sudder ameen, and to the session judge respectively, the cases which fall to their several jurisdictions. At any rate, the session judge, whose time is most valuable, ought not unnecessarily to be burdened by a business of detail of this kind, in which there is no room for the exercise of discretion, and which, therefore, should rather be committed to a subordinate. If the former arrangement be adopted, it should be provided, that when, on a perusal of the previous proceedings, it appears to an assistant judge or principal sudder ameen, that a case sent to him is beyond his jurisdiction, he shall immediately forward it to the session judge, and that the session judge shall pass to the assistant judge or principal sudder ameen in like manner any case sent to him which appears to be within the jurisdiction of the latter. It should perhaps be provided also that the session judge shall have a discretion to send back any case which he thinks has been wrongly transferred to him by an inferior judge.

p. 7. It is suggested by the Foujdaree Adawlut, that when a lower court has tried a case, which on the trial turns out to be one whereon it is not competent to pass sentence, the case should be handed on to the higher court, which should pass sentence without holding further proceedings, "except it deems it necessary to take evidence on points upon which that taken by the lower tribunal may appear defective." This is objected to by the government of Madras, but we think it might be safely allowed, providing that the depositions shall be read over in the presence of the deponents and the prisoner, and that the deponents shall be liable to fresh examination by the court and by the prisoner.

From Chief Sec. p. 3.

From Chief Sec. p. 3. The Madras government are of opinion that as long as the use of the Mahommedan law is continued, it will be necessary to retain a Mahommedan law officer for each court, and they think that he should be "associated with the session judge upon the trial of persons, and for reference to be made to him in questions of law," but that the futwa should be dispensed with.

Report, p. 13. Upon the principle of avoiding all change not necessary for the main purpose in view, we proposed that the session judge should be assisted by a Mahomedan law officer, as the judges of circuit are at present; and we meant that the law officer should deliver his opinion by a futwa, according to the existing rules.

Minute of the Hon. Mr. John Bird. Reg. VI. of 1819. We are sensible, however, that this mode of proceeding "is a great clog, and a great source of delay," particularly under the provision which requires a reference to be made to the Foujdaree Adawlut, when the judge disapproves * of the futwa upon grounds not relating to the personal competency of witnesses. We presume that the Madras government intend that the law officer sitting with the judge as an assessor, should deliver his opinion on every case, and should be at liberty to record his reasons, but that the decision should rest with the judge without a reference to the Foujdaree Adawlut in the event of a difference of opinion between them. In our general scheme of judicature, we shall probably propose that the judges having jurisdiction corresponding to that of the session judges, shall be assisted by assessors, but shall not be bound by their verdict or opinion. We do not apprehend therefore that the proposed arrangement will obstruct the introduction of the plan we have in contemplation; we think rather that it will tend to prepare the way for it. On this consideration, and seeing that nearly a third of the references now made to the Foujdaree Adawlut will be saved by the change recommended by the Madras authorities; your Lordship in Council may perhaps be disposed to sanction its adoption.

The Foujdaree Adawlut suggest as an alternative that the session judge should be empowered "to avail himself of the services of respectable natives, merely

* In the half year from January to June 1839, out of 101 cases referred to the Foujdaree Adawlut, 34 were referred on this account, being about one-third. In the whole year from July 1838 to June 1839, the number referred on this account was 51 out of 176, or nearly as one to three and a half.

merely as a jury, upon the principle either of Regulation VI. of 1832 of the Bengal Code, or of Regulation X. of 1827 of that for Madras." They say that "they are strongly inclined to the gradual and discretionary introduction of this plan." They do not however explain which of the two systems referred to, which are essentially different in respect to the effect to be given to the verdict or opinion of the assessors, they would recommend. We are of opinion that the principle of Regulation VI. of 1832 of the Bengal Code is preferable, and we see no objection to extending the provisions of Sec. 4 of that Regulation to Madras, to enable the session judges occasionally to avail themselves of the assistance of other respectable natives as assessors in criminal trials, either in conjunction with the law officer or separately.* We believe that in Bengal and Bombay the provision in question has been of little practical use, from the judges not being empowered (as in the Madras Jury Regulation) to enforce their attendance of persons summoned to serve as jurors or assessors, or as members of punchayets. We do not however propose, that in extending the provision to Madras, this defect should be remedied. We think it better that the experiment should be tried at first only on particular occasions, at the discretion of the judge, when he can obtain the voluntary assistance of persons of character and influence, whose example will be likely to dispose others to afford their services when called upon. It is an object to accustom the people to this duty gradually, taking care not to make it burthensome, and aiming rather to render it an honourable distinction to be called upon to perform it. In the code of procedure there will be provisions to make the performance of the duty obligatory, and in the meantime we would leave it optional.

Reg. X. of 1827.

We presume that the suggestions contained in paras. 10 to 14 of the Proceedings of the Foujdaree Adawlut, are approved by the Madras government, and we do not see any objection to them.

Proceedings, Foujdaree Adawlut, p. 10 to 14.

In p. 15 of these Proceedings, it is said, "the Law Commissioners state that there is only one district in which it will be necessary to provide for the trial of cases cognizable by the session judge at a place detached from his own station, viz. Canara, and they propose that the session judge at Mangalore shall go on circuit to Honore at least once in every year;" upon which the judges remark, that as the gaol at Honore, under the present system, is delivered half yearly, the delay now experienced would be aggravated by the arrangement suggested. It will be perceived, however, on reference to our Report, that we proposed that the judge should hold sessions at Honore at least once in every half year.

p. 15.

Report, p. 48.

The judges further observe in this place, that "the Law Commission overlook the fact, that in Malabar also, both Cochin and Tellicherry, at which assistant judges are stationed, are detached to a considerable distance on each side of Calicut, the station of the present zillah and of the future session judge." We did not overlook the fact, that there are detached auxiliary courts at Cochin and Tellicherry, and we had under consideration the question, whether at the latter place, which is the station of the court of circuit, and where consequently permanent sessions are now held, it would be necessary to make a special arrangement for the delivery of the gaol, such as we proposed for Honore; but seeing that it is only 42 miles distant from Calicut, and that the extreme point to the northward, subject to the jurisdiction of the auxiliary court, is not beyond 82 miles, it did not appear to us that the inconvenience that would attend the transmission of cases cognizable by the session judge to Calicut, would be so considerable as to render such a measure advisable. In many districts under the Madras presidency, the distance of the more remote places from the station of the zillah court is much greater than the distance of the farthest point in North Malabar from Calicut. With respect to Honore, for which we thought it proper to propose a special provision, it is to be observed, that it is 110 miles distant from Mangalore, which will be the station of the session judge, and there are places whence cases may come to be tried there, that are upwards of 200 miles from Mangalore.

Instead of the session judge of Mangalore holding a court at Honore half-yearly, as we proposed, the Foujdaree Adawlut recommend that the assistant judge

* In the presidency of Bengal, in 1839, out of 1,085 trials by session judges, in 154 the assistance of natives was had, under this Regulation; in 1840, in 207 trials out of 1,341.

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judge there should be vested with the powers of a session judge. They suggest that an officer of experience and standing in the service should be selected for this duty, and that he should have a superior rate of allowance. They think it will be sufficient to station at Sirsee in Upper Canara a sudder ameen instead of a principal sudder ameen, with power of himself to try and decide criminal cases that are now cognizable by sudder ameens on reference from criminal judges; that is to say, all criminal cases which a criminal judge is competent to decide, excepting cases in which the parties concerned are Europeans or Americans, or native officers of police; providing that cases not adjudicable by him shall be sent by the magistracy and police to Honore, to be finally disposed of by the assistant judge. Upon mature consideration we agree with the Foujdaree Adawlut, that it is advisable to empower the judge of the court at Honore to try all cases generally cognizable by the session judges which shall arise within the jurisdictions of Honore and Sirsee.

Sec. 2, Reg. III. of 1833.

p. 28.

It is proposed by the Sudder Adawlut also to give to this officer the powers of a civil judge for the trial of appeals from the sudder ameens and district moonsiffs subordinate to him. We think this should be done, and we do not see any reason why the original jurisdiction of a civil judge should not be conferred upon him likewise. Being vested with all the powers of a civil and session judge, it appears to us to be fitting that he should be designated by some other title than that of assistant judge, which is appropriated to an officer exercising an inferior jurisdiction. We would suggest that he should be styled Civil and Session Judge of Honore.

With respect to Sirsee, we approve of the arrangement recommended by the Sudder and Foujdaree Adawlut, except as regards the criminal jurisdiction proposed to be given to the sudder ameen; we think that a power extending to two years' imprisonment, with corporal punishment to the amount of 150 lashes with a cat-of-nine-tails, is greater than ought to be committed to a judge of this class, at a detached station, where he is not under the supervision of a European superior. Under Regulation III. of 1833, sudder ameens are empowered to exercise the jurisdiction of criminal judges only in such cases as the superior judges of the courts to which they are attached think proper to refer to them; and the judges are authorised to over-rule their sentences. It is probable that in the exercise of their discretion the criminal judges do not commonly refer to the sudder ameens the higher offences cognizable by them, and that those officers therefore seldom exercise the extended powers conferred upon the criminal courts by Regulation VI. of 1822. We think that if a sudder ameen is appointed to Sirsee, he should be restrained from passing sentences exceeding the limits specified in Sec. 7, Regulation X. of 1816, viz. six months' imprisonment, and corporal punishment not exceeding 150 lashes with a cat-of-nine-tails, in cases of theft; in other cases with a fine of 200 rupees, commutable to imprisonment for a further period of six months. If this is not approved, we think that a principal sudder ameen should be continued at this station; but as the duty is very light, the salary of the office might be less than the ordinary rate, something between that and the salary of a sudder ameen, so as to secure the services of a person of superior qualifications. We are still of opinion that it is not necessary to make a special provision for the trial of cases cognizable by the sessions judge at Tellicherry; we do not therefore recommend that an arrangement shall be made there similar to that proposed at Honore, as suggested by the Sudder and Foujdaree Adawlut.

	Rupees.
Monthly salary of Principal Sudder Ameen	500
— of Sudder Ameen - -	200

Proceedings, p. 17.

We agree with the Sudder and Foujdaree Adawlut, that "at Cochin a European principal sudder ameen will suffice in lieu of an assistant judge," and that he should have the powers proposed. The number of cases committed for trial before the circuit court from Cochin in the year from 1st July 1838 to 1st July 1839, was only four.

Proceedings, p. 19.

With respect to the charge of the gaols, the Foujdaree Adawlut propose that it shall be vested in the assistant judges, as we suggested, but not in the principal sudder ameens, "where European judicial officers exist." We are not quite satisfied with the reasons assigned for this exception, but we think the question is one which it will be best to leave to the determination of the local government.

Proceedings, pp. 25 and 26.

The Judges of the Sudder Adawlut concur in our recommendations with respect to the jurisdiction to be exercised by civil judges, and by assistant judges and principal sudder ameens respectively, in original suits, and appeals

appeals, regular and summary, both when the several courts are at the same station, and when they are at different stations. We have only to observe, that we did not mean that appeals from district moonsiffs should be preferred to the assistant judge or principal sudder ameen at a detached station, except "where the distance would render it very inconvenient for suitors to attend the principal court of the zillah," and we do not think that this exception applies to the parts of Malabar within the jurisdiction of the court at Tellicherry. Report, p. 32.

With respect to Sirsee, if a sudder ameen be appointed, we think that the appeal from district moonsiffs in that jurisdiction should lie to the court at Honore.

We recommend that all special appeals should be addressed to the Sudder Adawlut. The judges of that court agreeing with us in principle, but doubting the practicability of our plan with the present working power of the Sudder Adawlut, propose to except special appeals from decisions passed on regular appeals by assistant judges and principal sudder ameens, which they think should lie to the civil judge. Certainly there will be a great increase to the work of the Sudder Adawlut, by giving that court exclusive jurisdiction in special appeals; but looking to what is done in the Sudder Dewanny Adawlut here, and in the Sudder Adawlut at Bombay, we do not think there is reason to fear that it will exceed the ability of the court as at present composed. Report, p. 27. Proceedings, p. 27 to 34.

As the periodical statements do not distinguish the regular and special appeals decided by the zillah judges under the present system, we cannot ascertain exactly what would be the additional labour imposed upon the Sudder Adawlut by the measure proposed, but from the materials before us we may make an estimate which perhaps will not be very far from the truth. The special appeals are distinguished in the statements showing the operations of the provincial courts, and we find that in the second half of 1838 the number of special appeals admitted by those courts was 21. In the same period the number of appeals decided by the courts from which special appeals lie to the provincial courts, was 491. Of this number some must have been special appeals in which the decree was final; allowing for such cases, it may be assumed that the total number of special appeals admitted by the provincial courts was not more that five per cent. of the decrees passed on regular appeals by the courts referred to. The number of decrees passed on regular appeals in the same half year by assistant judges and principal sudder ameens, registers, and sudder ameens, was 641; and supposing the proportion of special appeals to be about five per cent. in these cases also, the number of such appeals preferred may be taken at 32.

By zillah judge - - -	435
By assist. judge, under Reg. VII. of 1809 - - - -	56
	491
Assistant judges - - -	190
Principal sudder ameens -	21
Registers - - - -	171
Sudder ameens - - -	259
	641

From this approximative estimate it would appear, that the number of appeals that would be transferred to the Sudder Adawlut would be about 106, or, say, from that to 120 per annum.

Transferred from prov. courts -	21
— from zillah courts -	32
	53
Half Year - - -	2
Whole Year - - -	106

Adding to the highest number the average of appeals, regular and special, now disposed of annually by the Sudder Adawlut, the total will be 132 per annum to be heard by three judges. This is near the average number of appeals decided by the Sudder Adawlut at Bombay, in which there are generally three judges present, the remaining one being absent on circuit. The average number of appeals disposed of by the Sudder Dewanny Adawlut at Calcutta is about treble. Each judge of the Madras Sudder Adawlut will have to decide about 44 appeals in the year; but more is done generally by the judges of the Sudder Dewanny Adawlut at Calcutta; and by many of them a great deal more, as will appear by the following memorandum of appeals finally disposed of, or opinions thereon recorded in 1837, 1838, 1839, and 1840, by the judges who were present during the whole, or a great part of each year.

Appeals decided by the Sudder Adawlut, Bombay, from 1834 to 1839:

1834 - -	135	1837 - -	58
1835 - -	133	1838 - -	136
1836 - -	112	1839 - -	119

Average - - - 115

Excluding 1837, in which the number of appeals decided was unusually low, the average is 127.

Appeals disposed of by the Sudder Adawlut, Calcutta, from 1832 to 1840:

1832 - -	221	1837 - -	476
1833 - -	312	1838 - -	203
1834 - -	392	1839 - -	177
1835 - -	794	1840 - -	445
1836 - -	521		

Average - - - 393

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—	1837.	1838.	1839.	1840.
By one Judge (*a*) - -	197	53	(*g*) 50	178
— - - - -	103	(*d*) 52	(*h*) 49	(*k*) 163
— - - - -	93	49	(*i*) 47	114
— - (*b*) - -	70	(*e*) 47	33	(*l*) 96
— - (*c*) - -	63	(*f*) 23	33	56
— - - - -	63	- - -	29	51 38

(*a*) Present to beginning of August.
(*b*) To the latter end of October.
(*c*) From 12th April to end of October.
(*d*) From 15th March.
(*e*) To the middle of September.
(*f*) Absent one month.
(*g*) From 18th February.
(*h*) From 8th June.
(*i*) From 23d August.
(*k*) From 3d April.
(*l*) From 2d June.

Besides the 445 civil appeals finally disposed of by the Sudder Dewanny Adawlut at Calcutta in 1840, the miscellaneous business was very heavy; viz.

Miscellaneous Petitions, 2,451 - - Miscellaneous Proceedings, 4,680.

The miscellaneous civil business done by the Madras Sudder Adawlut is not shown in the returns, but we apprehend it is comparatively light.

5 judges present through the year.
1 - — - 1½ month.
1 - — - 8 months.
1 - — - 7 months.
8

By the Calcutta Nizamut Adawlut, the number of criminal trials disposed of in 1840 amounted to 725; and orders were passed on 432 appeals. By the Madras Foujdaree Adawlut, in the year from July 1838 to June 1839 (the latest for which we have seen returns), the number of criminal trials disposed of was 102; the number of miscellaneous appeals in criminal cases disposed of by this court does not appear. By the Foujdaree Adawlut at Bombay, the number of criminal trials disposed of in 1838 was 163, and the average number from 1835 to 1838 was 133. The number of miscellaneous petitions in criminal matters disposed of by the same court in 1838 was 432, and the average number from 1835 to 1838 was 350.

We think that the judges should be restrained from admitting special appeals, for such reasons* as are stated in para. 34 of the Proceedings of the Sudder Adawlut, or upon any grounds but those distinctly specified in Clause 1, Sec. 4, Regulation XV. of 1816. We do not understand the suggestion in this para. that, "in lieu of admitting a special appeal to the Sudder Adawlut in such cases," (*i. e.*) in cases where the decree upon a regular appeal is contrary to evidence, in such of them as originate in the decrees of district moonsiffs, the civil judge should invariably refer the regular appeal to his assistant judge, or principal sudder ameen, so that the special appeals should come before himself.

Report, p. 34. In order to save the civil judges as much as possible from business of detail, we proposed that they should be authorized to refer the execution of their decrees to the assistant judges and principal sudder ameens, as the provincial courts now refer the execution of their decrees to the courts below them, and that the assistant judges and principal sudder ameens should likewise be charged with the execution of their decrees of the Sudder Adawlut; the Judges of the Sudder Adawlut, on the contrary, recommend that the civil judges shall Proceedings, p. 39. execute both their own decrees and those of the Sudder Adawlut. We agree with the judges, that to throw upon any single tribunal the execution of the decrees of the whole of the higher and lower courts is unadvisable. But this observation does not apply; for while we proposed to leave to the assistant judge and principal sudder ameen the duty now performed by them, and Report, p. 35. by zillah judges, of executing the decrees of the higher courts, we recommended

* Upon a question whether a special appeal may be admitted when the judgment may appear to be manifestly without or contrary to evidence, the Sudder Dewanny Adawlut at Calcutta held that a special appeal cannot be admitted on such grounds under Sec. 2, Reg. XXVI. 1814, corresponding with Clause 1, Sec. 4, Reg. XV. of 1816 of the Madras Code, which requires that all the facts of the case should be assumed as stated in the decree: Constructions, vol. 1, p. 84. *See* also rule mentioned, p. 81, vol. 5, Reports of Cases in the Sudder Dewanny Adawlut.

mended that they should be relieved from a heavier duty, by rendering the sudder ameens competent to execute their own decrees.

We do not perceive that the officer who tries a case has a material advantage over any other in investigating the independent claims which oppose the execution of the decree passed in it, "from his personal experience of the merits and details of the case, and knowledge of the individual characters of each party." The obstacles to execution generally arise from parties, and out of transactions, in no wise connected with the cause of action in the suit which has been tried and decided; for instance, judgment is given against *B.* for a debt due to *A.*, and the property of *B.* is taken in execution, when *C.* claims it on a mortgage. What advantage will there be to the civil judge who tried the case, from the knowledge gained by him on the trial in the investigation of such a claim? We adhere to our recommendation, because we think it proper that the civil judge should be exempted, as far as possible, from administrative duties, in order that his time may be saved to be employed with more advantage to the public service in the discharge of his judicial functions, and in the very important duty of superintending the proceedings of the lower courts; and because we think it advisable that there should be a local authority competent to receive and decide upon appeals in questions arising out of the execution of decrees of the Sudder Adawlut, and the courts of the civil judges, which could not be if the civil judges were themselves charged with the execution of those decrees. It is to be observed, that the claims which arise in the course of executing such decrees are generally such as, if brought in regular suits, would fall within the jurisdiction of the lower courts, and that they may be the subjects of regular suits eventually. It is further to be observed, that if the zillah judge executed his own decrees and those of the Sudder Dewanny Adawlut, appeals from his orders would lie to the Sudder Dewanny Adawlut, which would add greatly to the work of that court, and burden it still more, probably, than it would be burthened by having the general cognizance of special appeals. We beg to refer, on this subject, to Act No. V. of 1836, and Sec. 8, Act No. XXV. of 1837.

Proceedings, p. 39.

It does not appear to us that there are any other points in the papers transmitted by Mr. Secretary Maddock which require particular notice.

We have the honour to submit to your Lordship in Council a draft of an Act, in which we have embodied the suggestions offered in our former report, with the partial modifications now proposed. It is possible that some points of detail for which provision should be made have been overlooked, and that the draft may be defective in other respects. But if the arrangements expressed in it be approved generally, the Madras government may be requested to revise it, and to propose any amendments or additions that are thought to be necessary to give full effect to the plan intended.

We think it proper to notice, that we have not inserted in the draft a provision requiring session judges to take notes in English of the evidence given on the trials before them, because we think it better that the practice should be introduced as an official rule by an order of the Foujdaree Adawlut in the first instance, preparatory to its being made a part of the regular procedure eventually by law.

Report, p. 62. Proceedings, Foujdaree Adawlut, p. 21.

We also submit a draft of a separate Act for disposing of the causes that may be depending in the provincial courts of appeal at the time when their functions shall cease.

We have left also the annual reports, intended to be made by session judges, to be prescribed by an order of Government, or of the Foujdaree Adawlut.

Report, p. 21. Proceedings, Foujdaree Adawlut, p. 14.

We would suggest, in conclusion, that the title of Assistant Judge and Joint Criminal Judge will not be suitable for the officer presiding in the courts constituted according to Regulations I. and II. of 1827, under the new system. A better title, perhaps, will be, "Subordinate Judge of the Zillah of ———."

The denomination of "Auxiliary Court" will also be unsuitable for the court; it might be designated as the "Court of the Subordinate Judge of the Zillah of ———."

When there is more than one subordinate court in a zillah, the one detached might however still be called an "auxiliary court," and the judge might be styled "Auxiliary Subordinate Judge of the Zillah of ——."

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Further, we would observe that the designation of "Native Court," according to Regulation VII. 1827, is not now suitable for courts under principal sudder ameens, since that office is not confined to natives; the proper designation would seem to be "Court of the Principal Sudder Ameen of the Zillah of ——."

We submit this our report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
10 July 1841.

Legis. Cons. 29 Nov. 1841. No. 2. Enclosure.

An Act for abolishing the Provincial Courts of Appeal and Circuit in the Presidency of Fort St. George, and for establishing new Zillah Courts to perform their functions, and for establishing Courts constituted according to Regulations I. & II. and Regulations VII. & VIII. of 1827, in place of the existing Zillah Courts.

1. It is hereby enacted, that the Governor in Council of Fort St. George be empowered by an Order in Council to abolish the provincial courts of appeal and circuit, and the zillah courts now existing in that presidency, and to establish new zillah courts to perform the functions now performed by the provincial courts, and to replace the existing zillah courts by courts constituted according to Regulations I. and II. of 1827, or Regulations VII. and VIII. of 1827, at his discretion.

2. And it is hereby enacted, that every zillah court established under this Act shall be superintended by one judge, who shall be styled Civil and Session Judge of the zillah.

3. And it is hereby enacted, that the zillah courts established under this Act shall exercise, within the limits assigned to them respectively by the Order in Council by which they are constituted, the same civil jurisdiction as is now exercised by the provincial courts, and shall be vested with the same authority, and shall be subject to the same rules and restrictions as the provincial courts, except as hereinafter mentioned.

4. And it is hereby enacted, that in every zillah in which there is a court constituted according to Regulation VII. of 1827, the zillah court shall take cognizance of the original suits and appeals which by Sections 7 and 8 of that Regulation are reserved from the jurisdiction of such court.

5. First. And it is hereby enacted, in modification of Sec. 9, Regulation VII. 1827, that in all cases in which a principal sudder ameen has occasion to call upon a collector, subordinate collector, or assistant collector, or other European officer of Government, to do anything in any matter before his court, he shall transmit to such officer an extract from the proceedings of the court, containing a brief abstract of the case, and specifying what is required to be done by him, with a letter requesting that he will comply therewith, and that he will return an answer within a certain time; and such officer shall comply with the requisition so conveyed to him, in the same manner as if it had been accompanied by a precept from the zillah judge.

Second. Provided, that if such officer does not comply with such requisition, the principal sudder ameen shall report the case to the zillah judge, who shall proceed thereon as if the requisition had been made by a precept from himself.

6. First. And it is hereby enacted, that appeals shall lie to the zillah courts from all decrees or orders of assistant judges, principal sudder ameens, sudder ameens, and district moonsiffs, from which appeals are now allowable, but such appeals must be preferred within the period of 30 days, to be calculated as prescribed in the existing Regulations.

Second. Provided, that whenever a court is established in any zillah under an assistant judge, according to Regulation I. of 1827, or under a principal sudder

sudder ameen, according to Regulation VII. of 1827, at a place remote from the station of the zillah court, the Sudder Adawlut, with the sanction of the Governor in Council, may order appeals from the decisions and orders of district moonsiffs stationed within the limits assigned to such court, to be preferred to such assistant judge or principal sudder ameen; but it shall be competent to the zillah judge at his discretion to call up to his own court, from time to time, appeals received by such assistant judge or principal sudder ameen, and to dispose of them himself.

Third. Provided also, that the judge of any zillah court may refer to any assistant judge, or principal sudder ameen in the zillah, any appeals from district moonsiffs which may be filed in the zillah court.

7. And it is hereby enacted, that second or special appeals from the decisions of assistant judges and principal sudder ameens on regular appeals referred to them by judges of zillah courts, or preferred to them directly, shall be admissible only by the Sudder Adawlut, under the general rules and restrictions applicable to the admission of special appeals by the provincial courts.

8. And it is hereby enacted, that appeals, regular, special, and summary, from decisions and orders of the zillah courts, shall lie to the Sudder Adawlut under the same rules and restrictions as are applicable to similar appeals to the Sudder Adawlut from the provincial courts.

9. First. And it is hereby enacted, that it shall be competent to a single judge of the Sudder Adawlut to hold a sitting of court on all matters within the cognizance of that court, and to pass orders or judgments in conformity to the Regulations, subject to the following provisions.

Second. On the hearing of any appeal from the decision or order of any court of inferior jurisdiction in any case, regular or miscellaneous, if a single judge of the Sudder Adawlut shall be of opinion that no sufficient ground has been shown to impugn the correctness or justness of such decision or order, it shall be competent to such single judge, without reference to the order of the file, to confirm the same without requiring the attendance of the opposite party, and with or without a revision of the whole proceedings, as the nature of the case may appear to require, and to communicate the order of confirmation, through the court from whose judgment the appeal was made, to the opposite party, with a view to enable such party to take immediate measures for the execution of the decree. On the other hand, if a single judge shall be of opinion that the decision or order appealed against ought to be altered or reversed as being manifestly unjust, or at variance with some Regulation in force, or in opposition to the Hindoo or Mahomedan law or other law applicable to the case, or as having been passed without sufficient investigation of the merits, or as grounded on an assumption obviously erroneous or irrelevant with reference to the points at issue, it shall likewise be competent to a single judge to issue an injunction, pointing out the irregularity, illegality, or other defect apparent in the proceedings, decision, or order appealed against, and requiring that the court by which the same may have been held or passed, shall revise the case, and proceed thereon in such manner as may appear conformable to justice and to the Regulations.

Third. A single judge of the Sudder Adawlut may exercise his discretion in calling for the proceedings of the lower courts, or such parts of them as may appear necessary, and may further order a report in English, or the vernacular language commonly used in the court, as the occasion may render advisable, on any points requiring explanation, prior to passing a determination on the case, or matter in appeal.

Fourth. Provided, however, that if the decree or order appealed against shall have been passed in a regular suit or appeal, after a full investigation of the merits, and the ultimate judgment to be passed on the case may rest on a mere difference of opinion as to the facts or evidence, or on a disputed or doubtful point of law, or construction of any Regulation in force, it shall not be competent to a single judge to alter or reverse such decree or order. In such cases the single judge will be guided by the rules and practice heretofore in force, excepting that it shall be competent to a single judge, of his own authority, to admit a second or

special appeal, if there shall appear grounds for it, under any of the provisions specified in Clause 1, Sec. 4, Regulation XV. 1816.

Fifth. It shall further be competent to a single judge to direct that the execution of any judgment or order passed by an inferior court, in all cases in which that measure may appear to him expedient, may be stayed until a final decision has been passed thereon.

Sixth. Provided, however, that nothing in the foregoing clauses shall be understood to prohibit a single judge, in any case of difficulty or importance, in which he may deem it expedient and proper that the matter at issue shall be decided by two or more judges of the court, from recording his own opinion thereon, and referring the case to another judge.

10. And it is hereby enacted, that the provisions of clause 2 of the foregoing section shall be applicable to the judges of zillah courts, and to assistant judges and principal sudder ameens in appeals preferred to them directly.

11. And it is hereby enacted, that any provisions of the existing Regulations which require inferior courts to furnish the Sudder Adawlut with translations of papers written in the vernacular language of the country, which they may transmit to that court in appeals and other cases, be rescinded.

12. And it is hereby enacted, in modification of Sections 13 and 14, Regulation V. of 1802, that all processes and orders therein described which may issue from the Sudder Adawlut, shall be directed to the zillah courts established under this Act.

13. And it is hereby enacted, that it shall be competent to the judges of the zillah courts to refer the execution of decrees of the Sudder Adawlut, and of their own courts, to the assistant judges or principal sudder ameens subordinate to them, who shall proceed thereon under the rules prescribed in the general regulations applicable to such cases: provided, that an appeal shall lie from any order passed by an assistant judge or principal sudder ameen under such reference, to the zillah court in the first instance, and secondly, a special appeal to the Sudder Adawlut.

14. And it is hereby enacted, that all other processes issued by the Sudder Adawlut, and directed to the zillah court, or originating in the zillah court, shall be served under the orders of the zillah judge by the proper officers of the court.

15. And it is hereby enacted, in modification of Sec. 6, Regulation III. 1833, that the power of suspending sudder ameens from office, thereby vested in the zillah, assistant, and native judges, shall for the future be vested in the judges of zillah courts established under this Act.

16. First. And it is hereby enacted, that all parts of Regulations VI. and VII. 1816, in which the zillah judge is mentioned, shall be understood as applicable to the judges of the zillah courts established under this Act; excepting Sec. 56, Regulation VI. 1816, which shall be applicable to the assistant judges and principal sudder ameens; and all parts of Regulation VI. of 1816, in which the provincial court is mentioned, shall be understood as applicable to the Sudder Adawlut.

Second. Provided, that district moonsiffs may be employed by assistant judges and principal sudder ameens, as well as by judges of zillah courts, in the manner and for the purposes specified in Sections 60 and 61, Regulation VI. 1816.

17. And it is hereby enacted, that when a zillah judge sees reason for calling up, under Sect. 54, Regulation VI. 1816, any cause that may be depending before a district moonsiff, he may refer it for trial either to another district moonsiff or to a sudder ameen.

18. And it is hereby enacted, that when a district moonsiff shall forward to a zillah judge, under Clause 2, Sect. 3, Regulation I. 1829, a suit instituted in his court in which he is directly or indirectly a party, or otherwise personally interested, the judge may refer it for trial either to a sudder ameen or another district moonsiff.

19. And it is hereby enacted, that the judges of zillah courts may refer to the subordinate assistant judges and principal sudder ameens applications for the execution of decisions of district punchayets, preferred under Sect. 17, Regulation VII. 1816.

20. And it is hereby enacted, that it shall be competent to judges of zillah courts to pass orders of their own authority on complaints preferred under Sect. 11, Regulation VII. 1816, according to Clause 4 thereof.

21. And it is hereby enacted, that the zillah judge shall be competent to receive, and pass orders of his own authority on, complaints preferred under Sect. 27, Regulation VII. 1832.

22. And it is hereby enacted, that Clauses 1 and 2, Sect. 8, Regulation VI. 1816, shall be understood as applicable respectively to the civil and session courts established in zillahs under this Act, with respect to the district moonsiffs, and also as extended by Sect. 13, Regulation VIII. 1816, with respect to sudder ameens.

23. And it is hereby enacted, that Sect. 3, Regulation VIII. 1816, be rescinded.

24. And it is hereby enacted, in modification of Sect. 14, Regulation VIII. 1816, that sudder ameens shall have authority to order execution of the decisions passed by them, according to the rules for the execution of decrees applicable to the courts to which they are attached, and to issue all process relative to the causes and proceedings before them under their own official seal and signature, and to realize fines imposed by them without reference to any superior officer.

25. And it is hereby enacted, that the session judges in the zillah courts established under this Act shall exercise, within the limits assigned to those courts respectively, the same criminal jurisdiction as is now exercised by the judges of the courts of circuit, and shall be vested with the same authority, and subject to the same rules and restrictions, as far as they are applicable and consistent with this Act.

26. And it is hereby enacted, that the said judges shall hold permanent sessions in the said zillah courts, for the trial of all persons accused of crimes and offences now cognizable by the courts of circuit, who shall be committed for trial by the assistant judges or principal sudder ameens subordinate to them respectively.

27. And it is hereby enacted, that Sect. 2, Regulation XIII. 1832, be rescinded.

28. And it is hereby enacted, in modification of Clauses 1 and 3, Sect. 9, Regulation X. 1816, that if, upon a perusal of the depositions given before the magistrate or native officers of police, it shall appear to the assistant judge or principal sudder ameen before whom a prisoner is brought, that there is evidence of the prisoner being concerned in the perpetration of the crime or misdemeanor with which he is charged, and if the deponents confirm their depositions on oath before him, it shall be competent to the assistant judge or principal sudder ameen, without further investigation, to commit the prisoner to take his trial before the session judge.

29. And it is hereby enacted, that the session judge shall commence the trial immediately, and shall take the examinations of the prosecutor and of the witnesses for the prosecution, and the defence of the prisoner and the examinations of the witnesses for the defence, and if more witnesses have been previously summoned and are expected to attend, or if the session judge thinks it necessary after the commencement of the trial to call for further evidence, he shall adjourn the proceedings, permitting the prosecutor and witnesses to return to their houses, unless he shall see special cause to detain them in order to their being confronted with the other witnesses whose attendance is expected.

30. And it is hereby enacted, that, except in cases in which the session judge thinks proper to proceed as authorised in Sect. 32 of this Act, the Mahomedan law officer attached to the zillah court shall sit with the session judge for the

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trial of persons charged with crimes now cognizable by courts of circuit, and shall give his opinion upon every case in the capacity of an assessor, and shall answer any questions that may be put to him by the judge on points of law, which opinion and answers shall be recorded on the proceedings; but it shall not be necessary to take a futwa from him in the manner prescribed in the Regulations applicable to the courts of circuit.

31. First. And it is hereby enacted, that if the session judge does not concur in the opinion of the law officer, he shall not refer the case to the Foujdaree Adawlut unless, from the nature of the crime charged, it is necessary to do so under the existing Regulations, but shall pass sentence according to his own opinion in conformity with the Regulations.

Second. Provided, that such difference of opinion between the session judge and the law officer shall be set forth in the calendar of cases disposed of by the session judge, to be submitted to the Foujdaree Adawlut.

32. First. And it is hereby enacted, that it shall be competent to session judges, in the trial of criminal cases, to avail themselves, at their discretion, of the assistance of respectable natives, or other persons, in either of the two following ways: First, by constituting two or more such persons assessors or members of the court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of each of the assessors shall be given separately and discussed; and if any of the assessors, or the authority presiding in the court, should desire it, the opinions of the assessors shall be recorded in writing; or, secondly, by employing them more nearly as a jury. They will then attend during the trial, will suggest, as it proceeds, such points of inquiry as occur to them; the court, if no objection exists, using every endeavour to procure the required information, and after consultation will deliver in their verdict. The mode of selecting the jurors, the number to be employed, and the manner in which their verdict shall be delivered, are left to the discretion of the judge who presides.

Second. Provided, that the law officer may be one of the assessors or jury.

Third. Provided also, that the decision shall be passed by the judge according to his own opinion, whether he agrees with the assessors or jury or not, if the case be one which, under the existing Regulations, it is competent to him to dispose of finally; but if he differs from the assessors or jury, such difference shall be set forth in the calendar.

33. And it is hereby enacted, that it shall be competent to a single judge of the Foujdaree Adawlut, on a revision of the proceedings held on any criminal trial by any court of inferior jurisdiction, to reverse or alter the sentence or order passed thereon, provided such reversal or alteration be in favour of the accused, whether for acquittal, mitigation of punishment, or otherwise.

34. And it is hereby enacted, that if a single judge of the Foujdaree Adawlut, on a revision of the proceedings in a trial held by a session judge, concur in opinion with the session judge, whether for conviction or acquittal, it shall be competent to such single judge to pass a final sentence, except for capital punishment, which, as heretofore, shall, in all cases, require the concurrent opinion of two judges of the court.

35. And it is hereby enacted, that the rule contained in Clause 6, Sect. 9, of this Act, regarding the powers to be exercised by a single judge of the Sudder Adawlut, is hereby declared to be equally applicable to the powers vested in single judges of the Foujdaree Adawlut.

36. And it is hereby enacted, that it shall be competent to the court of Foujdaree Adawlut, on a review of the abstract statements of prisoners punished without reference, to mitigate the sentence passed on any prisoner when such sentence may appear, on the session judge's own showing of the facts, manifestly illegal or too severe, and it shall not be necessary for the court to call for the proceedings in such cases, unless they shall see special reasons for so doing. It shall further be competent to the court in like manner to annul the sentence passed in any case, when such sentence may be in opposition to any law or regulation in force, and to require the session judge to pass a new sentence according to law.

37. And

37. And it is hereby enacted, in modification of Sect. 2, Regulation III. 1833, that the authority to overrule judgments passed by sudder ameens in criminal cases shall be vested in the sessions judges.

38. And it is hereby enacted, that Sect. 24, Regulation X. 1816, Clauses 2 and 3, Sect. 4, Regulation II. 1822, Clause 2, Sect. 5, and Clauses 2 and 4, Sect. 8, Regulation VI. 1827, shall be applicable to session judges.

Second. Provided, that under Clause 2, Sect. 5, and Clauses 2 and 4, Sect. 8, Regulation VI. 1827, session judges shall not, of their own authority, annul or modify the orders of magistrates, but shall refer the cases for the orders of the Foujdaree Adawlut.

39. And it is hereby enacted, that it shall be competent to session judges to receive petitions against sentences passed by magistrates, and to call for the proceedings of the magistrates, and for explanations upon the matter of the petitions, and if it shall appear to them that the sentences complained of ought to be annulled or modified, to refer the cases for the orders of the Foujdaree Adawlut.

40. And it is hereby enacted, that prosecutions against magistrates and their assistants, under Sec. 43, Regulation IX. 1816, shall be instituted in the zillah courts established under this Act.

41. First. And it is hereby enacted, in modification of Sec. 3, Regulation XIII. 1832, that it shall be the duty of the session judge to bring to the notice of the Foujdaree Adawlut any gross misconduct of any native officer of police which may have come under his observation in a case investigated by himself, or which may have been reported to him by a subordinate assistant judge or principal sudder ameen, and which appears to him to deserve the penalty of dismissal, and it shall be competent to the Foujdaree Adawlut to order the dismissal of such officer.

Second. Provided, that the session judge shall furnish a copy of his report upon the case to the magistrate, and the Foujdaree Adawlut shall not pass a final order upon it until the answer of the magistrate, which shall be addressed to that court, has been received and considered.

42. And it is hereby enacted, that it shall be the duty of the session judge to bring to the notice of the magistrate any minor neglects, or omissions, or transgressions of the subordinate officers of police which have come under his own observation, or have been reported to him by a subordinate assistant judge or principal sudder ameen, and such notifications shall be recorded in the periodical returns to the Foujdaree Adawlut.

43. And it is hereby enacted, that it shall be competent to the session judge to report to the Foujdaree Adawlut any neglect or delay on the part of the magistrate, or the subordinate officers of the magistracy, by which the course of justice has been seriously impeded, in cases before himself, or which have been reported to him by a subordinate assistant judge or principal sudder ameen.

44. And it is hereby enacted, that it shall be competent to session judges, assistant judges, and principal sudder ameens to communicate directly with the district officers of police, for the purpose of obtaining all the evidence that appears to be forthcoming in cases in which prisoners have been forwarded by them, charged with crimes and misdemeanors, Sec. 55, Regulation XI. 1816, notwithstanding.

45. And it is hereby enacted, that except as provided in Sec. 49 of this Act, Europeans and Americans charged with offences not punishable by the magistrate, committed within the local jurisdiction of a principal sudder ameen, shall be sent for trial to the session judge, who shall proceed thereon in conformity with the rules applicable to his own court, or to courts constituted according to Regulation II. of 1827, as the case may require.

46. And it is hereby enacted, that in any zillah in which the Governor in Council of Fort St. George deems it expedient to establish the zillah court and the subordinate court or courts under assistant judges or principal sudder ameens at separate stations, it shall be competent to the said Governor in Council, by an Order in Council, to authorize the session judge to take cognizance of all criminal cases subject ordinarily to the jurisdiction of the subordinate courts, as well as cases subject to his own jurisdiction, which shall be sent

to him by the magistrate or officers of police of such talooks as shall be therein indicated, and to dispose of such cases according to the rules applicable to them respectively.

47. And it is hereby enacted, that in any zillah in which the Governor in Council of Fort St. George deems it unnecessary to establish a subordinate civil and criminal court, constituted according to Regulations I. and II., or Regulations VII. and VIII. 1827, it shall be competent to the said Governor in Council, by an Order in Council, to authorise the civil and session judge to exercise the civil and criminal jurisdiction as signed to such courts, besides the proper civil and criminal jurisdiction of the zillah court, and to take cognizance immediately of criminal cases within his proper jurisdiction as session judge, as they are sent up by the police.

48. And it is hereby enacted, that when the said Governor in Council deems it proper to establish in any such zillah a court under a sudder ameen at a detached station, it shall be competent to the Governor in Council to authorise the sudder ameen to receive and dispose of civil suits arising in the portion of the zillah over which jurisdiction shall be assigned to him, without the intervention of the zillah judge, under the limitation as to amount or value prescribed by the existing Regulations; and also to receive and dispose of criminal cases sent to him by the police of the division subject to his jurisdiction, for which the punishment prescribed shall not exceed the limitation specified in Sec. 7, Regulation X. of 1816.

49. And it is hereby enacted, that whenever the Governor in Council of Fort St. George shall establish a court under a European principal sudder ameen at Cochin, such principal sudder ameen shall exercise within the jurisdiction assigned to him all the powers of a criminal court constituted according to Regulation II. of 1827, and also all the powers of a joint magistrate.

50. And it is hereby enacted, that when civil and criminal courts, constituted according to Regulations VII. and VIII. of 1827, are established at the station of the zillah court under a principal sudder ameen, the zillah gaol shall be under the charge of the session judge.

51. And it is hereby enacted, that when civil and criminal courts, constituted according to Regulations I. and II. of 1827, are established at the station of the zillah court, the zillah gaol shall be under the charge of the judge of those courts; and the session judge shall be vested with authority to visit the gaol, and to pass orders according to Section 32, Regulation VII. of 1802, and Section 7, Regulation X. 1832.

52. And it is hereby enacted, that the subordinate officers and vakeels who shall be appointed to the zillah courts established under this Act, shall be subject to the same rules as are applicable to the subordinate officers and vakeels of the provincial courts.

53. And it is hereby enacted, that the Governor in Council of Fort St. George shall direct what law officers shall be appointed to the zillah courts established under this Act, and shall order the manner of their appointment; and such officers shall be subject to the same rules as the law officers of the provincial courts.

54. And it is hereby enacted, that the Governor in Council of Fort St. George may appoint an assistant judge to any zillah court, to whom the civil judge shall have authority to refer any civil cases which may be depending before him, excepting appeals from the assistant judge or principal sudder ameen of a court constituted according to Regulation I. or Regulation VII. of 1827, and such assistant judge shall be empowered to try and dispose of cases so referred to him under the rules applicable to the civil judge.

55. And it is hereby enacted, that it shall be lawful for the Governor-general in Council, by an Order in Council, to authorize the Governor in Council of Fort St. George, at any time, to change the stations of zillah courts and the limits of their local jurisdiction, and to abolish any of the zillah courts which shall be first established under this Act, and to establish new zillah courts in any parts of the presidency of Fort St. George.

Indian Law Commission, (signed) *J. C. C. Sutherland*,
10 July 1841. Secretary.

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Legis. Cons.
29 Nov. 1841.
No. 3.

DRAFT of an ACT for disposing of the ORIGINAL SUITS and APPEALS depending before the Provincial Courts of Appeal in the Presidency of Fort St. George, the Abolition of which is authorised by Act No. —— of 1841.

WHEREAS it is necessary that provision should be made for the disposal of original suits and appeals depending before the provincial courts of appeal in the Presidency of Fort St. George, the abolition of which is authorised by Act.

1. It is hereby enacted, that the Governor in Council of Fort St. George be empowered to appoint a single judge to hold a court in place of each of the said provincial courts at the station of such provincial court, with a special commission to dispose of all original suits and appeals which may be depending before such court on the date on which the said Governor in Council shall order the functions of the provincial courts to cease.

2. And it is hereby enacted, that the judges who shall be appointed for this purpose shall be styled respectively; viz. Special Commissioner for disposing of the causes depending before the late provincial court for the [northern, southern, centre, or western] division.

3. And it is hereby enacted, that every special commissioner so appointed, previously to entering upon the execution of the duties of his office, shall take and subscribe the oath prescribed to be taken by judges of the provincial courts of appeal, before any person who shall be commissioned by the Governor in Council of Fort St. George to administer it.

4. And it is hereby enacted, that the special commissioners shall transfer the original suits on the files of the provincial courts, in which no proceedings have been held beyond the filing of the pleadings and exhibits, to the zillah courts within whose jurisdiction they would fall respectively if they were commenced *de novo*, and such suits shall be tried and decided by the civil judges of those courts, subject to appeal to the Sudder Adawlut.

5. First. And it is hereby enacted, that all other original suits, and all appeals on the files of the provincial courts, shall be tried and decided by the special commissioners, who shall have the same powers as heretofore have been vested in two or more judges of such courts sitting together, subject to the same rules and restrictions, and under the same provisions for appeals to the Sudder Adawlut.

Second. Provided that, in a case of special appeal from a lower court, if a special commissioner differs from the court from whose decision the appeal is preferred, he shall not pass a final judgment reversing the decision, but shall record his opinion, and transmit the record of the case to the Sudder Adawlut, to be laid before a single judge of that court, whose judgment, confirming or reversing the decree appealed against, shall be final.

6. And it is hereby enacted, that the execution of decrees of the special commissioners, and also of the provincial courts, for which process was not issued previously to their abolition, shall be committed to the judge of the zillah in which the suit was instituted; or if the suit was instituted in the provincial court, to the judge to whose jurisdiction the suit would fall if it were commenced *de novo*. The records of the cases shall be transmitted, together with the decrees, to the respective zillah judges, who shall proceed in the execution of the decrees in the same manner as if they were passed by themselves, and appeals from their orders shall lie to the Sudder Adawlut.

7. And the judges of the zillah courts shall proceed in like manner to complete the execution of decrees of the provincial courts under process previously issued, subject to appeal to the Sudder Adawlut.

8. And it is hereby enacted, that from decisions passed by zilla judges, assistant judges, and principal sudder ameens, previously to the abolition of the provincial courts, in cases appealable to those courts, in which the time allowed for appealing shall not have expired at the date of their abolition, an appeal shall lie to the Sudder Adawlut, provided that the petition of appeal be presented to the Sudder Adawlut, or to the civil judge of the zillah in which the original

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suit was decided, within one month from the expiration of the period within which it ought to have been presented under the rules applicable to appeals to the provincial courts.

9. And it is hereby enacted, that it shall be competent to the Governor in Council of Fort St. George to authorise the appointment of ministerial officers and vakeels of the courts of the special commissioners, who shall be subject to the same rules as are applicable to the ministerial officers and vakeels of the provincial courts.

(signed) *J. C. C. Sutherland*, Secretary.

MINUTE by the Hon. *W. W. Bird*, Esq., dated 7 August 1841.

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NOTWITHSTANDING the reasons assigned by the Law Commission, in their letter of the 10th ultimo, for adhering to the plan originally designed by them for the amendment of the Madras judicial system, I am still of opinion that the objections urged by the government of Fort St. George to parts of that plan have not been satisfactorily answered, and that the draft of Act submitted for carrying it into effect should consequently undergo considerable modification.

In regard to civil matters, there is but little difference between the two authorities. The government of Fort St. George would, as was done in Bengal on the abolition of the provincial courts, vest in the civil judge the same powers as were previously exercised by the zillah judges in respect to the admission of original suits as well as appeals, while the Law Commission would transfer to the civil judge the admission of all appeals; but the admission of all original suits not formerly cognizable by the provincial courts, and the power of transferring such as are to be heard by the inferior judicatories, they would reserve for the assistant judge or provincial sudder ameen at the same station. This the government of Fort St. George consider, I think on good grounds, as calculated to lead to great inconveniences, and I would propose that the draft should be modified accordingly.

In regard to criminal matters, the difference between the government of Fort St. George and the Law Commission is more considerable. The plan recommended by the latter authority is to establish 18 superior courts, with a sessions judge in each, to take up the whole criminal jurisdiction of the provincial courts of circuit as at present constituted, leaving all the rest of the criminal courts in point of jurisdiction exactly as they are. This is described by the judges of the Foujdaree Adawlut, and I think with truth, as a half measure, calculated to lessen in a material degree the delay previous to trial, but will by no means remedy the existing evil to the extent which its magnitude requires; that in the gravest crimes three examinations of each case would still continue to be held, two of them conducted generally under the same roof; that nothing will have been effected towards diminishing the intrigue, chicanery, recantation, falsehood, and perjury, to which going over the same ground so frequently before different tribunals unavoidably gives rise; and that the public would still be exposed far more than is necessary to those vexations which incline many to submit quietly to be robbed, rather than undergo the protracted attendance and other inconveniences with which our judicial proceedings have hitherto been accompanied.

The Foujdaree Adawlut are further of opinion, that if change is to be made, the improvement should be as effectual as possible, and that the existing obstructions to the administration of justice can only be removed by an arrangement under which a single trial by a European judge shall do the work of the two now conducted by the criminal and circuit courts respectively. They accordingly suggest that all cases not punishable by the police or magistracy, shall go direct from them to the sessions judge, whose duty it will be to distribute them to the respective authorities, who, under the new plan, will be competent to try and pass sentence on the offenders, except in the six detached courts situated at a distance from the sudder stations, to which the magistracy and the police should send such cases as those courts are competent to decide, forwarding to the sessions judge all other graver offences.

It is admitted by the Law Commission, that much time would be saved, as well as much inconvenience to the prosecutors and witnesses in the cases tried by

by the sessions judge, were they to come to him direct from the magistracy or police; and they are of opinion that under a better organised system this course may ultimately be pursued. But they urge that by the intervention of the assistant judge or principal sudder ameen, all cases cognizable by the sessions judge, sent up by the police or magistrate without sufficient proof to support the charges against the prisoners, amounting at least to one-half, are prevented from going to trial, and that to dispense with such intervention would at once more than double the number of persons to be tried by the sessions judge, who would at the same time have a great deal more to do from the cases coming up without being previously sifted and prepared by an intervening authority, and whose valuable time would thus be taken up with a description of work which could be much more advantageously and appropriately performed by an inferior court.

The Foujdaree Adawlut, however, view the matter in quite a different light, and observe, that the sessions judge would then himself perform what may remain to be done in each case as it comes up from the police or from the magistrate for trial, and that great advantage would result from his doing so, inasmuch as he must know much better than any one else what parts of the case require further elucidation, and that this is no more than what is now often done by circuit judges, and always by criminal judges and sudder ameens, in cases in which sentence is passed by themselves, and is even recommended by the Law Commission in cases in which Europeans or Americans are concerned, as well as in all cases tried by the government agents.

The Law Commission propose as an alternative, that instead of allowing all cases not punishable by the police or the magistracy to go direct from them to the sessions judge, the magistracy and the police should every where send direct to the assistant judge or principal sudder ameen, and to the sessions judge respectively, the cases which fall to their several jurisdictions, leaving in the hands of the latter authority no superintendence but what is at present exercised by the circuit court. To this not only the Foujdaree Adawlut but the government of Fort St. George are strongly opposed, being of opinion, for the substantial reasons assigned by both, that there should be a civil and criminal court at each station, with a civil and sessions judge at the head, to which all other judicial authorities in the district should be subordinate.

In this view of the subject, as already stated in my former minute, I entirely concur. It is in fact placing the civil and sessions judges at Madras, as far as circumstances will admit, on the same footing as civil and sessions judges in Bengal, which is the object the Home Authorities appear to desire, and I would suggest that the draft submitted by the Law Commission be altered so as to carry it into effect.

To my proposition for increasing the powers of the magistrates, the Law Commission object that the magistrates, generally speaking, could not give sufficient attention to the business of revenue and police if a more extended jurisdiction were committed to them. I am fully aware that under the presidency of Madras the collectors have far too much business to take upon themselves, in a majority of the districts, the disposal of a greater number of criminal cases than they do at present. But the object I had in view, was not to impose upon them, where it could not be undertaken, any additional labour, but to enable them, by a little extension of their powers, and without any further trouble, finally to dispose of themselves, cases which they must otherwise forward with all the parties concerned to the criminal courts. It appears from the statement submitted by the Law Commission, that in the second half year of 1838, and the first half year of 1839*, nearly half the number of cases which came before the

* Magistracy.

	CHARGES PREFERRED.		SENT TO CRIMINAL COURTS.	
	Cases.	Persons.	Cases.	Persons.
Second Half of 1838 - - - -	283	910	131	395
First Half of 1839 - - - -	339	1,143	174	441

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the magistrates, involving 836 persons besides prosecutors and witnesses, were sent to the criminal courts, and it may be fairly presumed that, had the powers of the magistrates been a little less restricted, many of these cases might have been decided on the spot, not only to the relief of the criminal courts, but also to the great satisfaction of the parties concerned. This restriction too is the more to be regretted when the magistrate is required by his revenue duties, which is often the case, to visit the interior of his district, and he has to send in to the criminal court, perhaps a great distance off, to be re-tried, all persons convicted before him of offences for which 18 stripes with a rattan, or a fine of 50 rupees, and a month's imprisonment, would not be a sufficient punishment; I deem it right, therefore, to urge again my proposition that the powers of the magistrates be increased to the extent originally vested in the criminal courts by Sect. 7, Regulation X. 1816, of the Madras Code, and that for this purpose authority be given in the Act to the government of Fort St. George, to invest the magistrates with such powers whenever the state of business in any district or districts, may render it necessary or desirable.

The only other point to which I deem it necessary to draw attention, is the introduction into the proposed Act of certain clauses for the appointment of assessors. This was not contemplated in the original plan, nor does it appear to have been anticipated or desired by the Madras authorities, and as the principle is entirely new to the natives of this country, the experiment, especially as there is much diversity of opinion on the subject, ought, I think, to be postponed until the general plan for all the presidencies, which the Law Commission have in contemplation to bring forward for the purpose, shall have been fully discussed and decided upon; I propose, therefore, that all the provisions of Sect. 32 of the proposed Act be omitted, and that we content ourselves at present with extending to Madras the provisions contained in Regulation VI. 1832, of the Bengal Code, as recommended by the Foujdaree Adawlut.

In regard to the number and constitution of the different courts proposed to be established in each zillah, I have said nothing, because it is a point on which the Madras authorities must be presumed to be best qualified to judge; but I doubt the necessity, except under very peculiar circumstances, of having two courts in which European judges preside at the same station, and am of opinion that in almost all, a principal sudder ameen might be substituted for the assistant judge. This is universally the practice in Bengal, and there is nothing stated to show that it might not with equal advantage be the same at Madras. It would be attended with a great saving of expense, without, there is reason to believe, any diminution of efficiency, and it would get rid of the difficulty referred to by the Law Commission of determining on a suitable designation for the officer who is to preside in the inferior court, the title of assistant judge or of subordinate judge, auxiliary court, auxiliary subordinate judge, which the Commission suggest, being all equally inappropriate.

The additional draft Act, submitted by the Law Commission for disposing of the causes depending in the provincial courts at the time of their dissolution, appears to me to be unnecessary. All those causes may be disposed of as was done on the abolition of the same courts at this presidency, in the mode provided for by Regulation II. 1833, and the expense of the special commissioners, proposed to be appointed for the purpose of disposing of those causes, be entirely saved.

There remains only to propose, should his Lordship in Council concur generally in the sentiments above expressed, that the papers be forwarded without delay to the government of Fort St. George, with instructions to refer the proposed Act for the consideration of the courts of Sudder and Foujdaree Adawlut, and resubmit it with such alterations and amendments as may appear to that government, under all the circumstances of the case, to be necessary and proper.

(signed) *W. W. Bird.*

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Legis. Cons. 29 Nov. 1841. No. 5. Madras Judicatories.

MINUTE by the Hon. *H. T. Prinsep*, Esq. dated the 25th August 1841.

I HAVE given much consideration to the scheme of tribunals submitted by the Law Commission, and to the objections offered by the Government and Sudder Court of Madras, and I confess I incline to the same opinion as Mr. Bird, and think the plan of the Law Commission for abolishing the circuit courts of Madras may advantageously receive some, if not all of the modifications suggested.

There are, it appears, at present 12 provincial court judges, as many zillah judges, nine assistant judges, and 14 registers, in all 47 civil servants employed in the administration of justice at Madras, besides the magistrates, whose functions being united with those of revenue collector, under the system established by Sir Thomas Munro, a fraction only, and it is to be feared much too small a fraction, of their time and labour can be regarded as given to this important work.

The evils which were found to prevail in the provincial courts of Bengal, exist it would seem also at Madras. As civil courts these judicatories are defective from the rapid changes incident to the number of judges in each court, and to the circuit rotation occasioning frequent absences, which changes prevent any consistency of decision, and allow great facilities for intrigue, while the engrossing circuit and criminal duties occasion also interruptions and delays no less prejudicial. As criminal courts, though the work on circuit is ordinarily well done, still the intervals for holding sessions are of necessity so wide, as to defeat the ends of justice in many cases when the parties are guilty, and always to aggravate the injury of the trial when they are innocent.

For these reasons principally, the provincial courts were abolished in Bengal, and for nearly the same it is now proposed to abolish them in the Madras presidency. A single judge presiding in a superior court of civil and criminal jurisdiction, subject only to the Sudder Court at the presidency, is the form of judicatory proposed in lieu of the provincial courts. Of these 18 are proposed for the entire Madras territory, that is, one for each district, excepting the extreme northern one of Ganjam, from which so much has been severed by the recent appointment of a political commissioner for the Jungul tract, that one judge is considered sufficient for both that district and Vizagapatam (Bysakhputun).

The first question at issue is, whether to constitute these superior district courts as courts of appeal only from decisions by the inferior courts, or to give them also the original jurisdiction of the provincial courts, that is, in all cases for value exceeding 5,000 rupees.

The Law Commission would continue to them the original jurisdiction of the provincial courts, and would further make them the court of general appeal from all inferior judicatories, leaving it to them to distribute their appeals to competent local courts for decision.

I do not exactly understand in what particular manner the Madras Sudder and government would change the original jurisdiction of the civil judges, as derived to them by transfer from the provincial court, but the question seems to be, whether the assistant judges and sudder ameens are to have the original jurisdiction of the old zillah courts, and the same right of trying certain appeals, or are to be mere referees subordinate to the civil judge with extended powers.

My opinion is in favour of giving to the new civil judges the precise jurisdiction of the provincial courts, added to the regulating and controlling authority heretofore exercised by the zillah judges in their civil capacity. I do not hear that there is so much civil business in the courts of Madras, as to render it advisable on that account to relieve the civil judge from such overriding and controlling authority; while it is necessary, I think, with reference to the character of the inferior courts, and their liability to be filled by incapable or imperfectly qualified persons, that the superior judge should have as much power of correcting or preventing mischief as can be given to him.

I gather from the Report of the Law Commission, that it is proposed to leave the nine assistant judges. The Madras government increase the number to 11, besides having two extra at out-stations.

The Madras government propose further, to have 10 instead of three principal sudder ameens, and 31 instead of 28 sudder ameens.

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This is a very considerable enlargement of the number of courts, but not perhaps more than would be necessary in case of the abolition of the registers' courts.

This scheme, however, taking the number of assistant judges at nine, and allowing two out-courts besides, makes provision for the employment of 29 only of the 47 civil servants now employed in judicial duties, and I see no suggestion as to the mode in which the other 18 are to absorbed. Four men, indeed, are to be reserved to bring up the arrears of the provincial courts, and to effect the transfer and distribution of cases and other business, but this is evidently only a temporary duty that ought not to last more than a few months. All the registers, therefore, will be thrown immediately out of employment.

With respect again to criminal justice, the 18 district judges are to exercise all the criminal powers heretofore vested in the courts of circuit; but because the police and chief magistracy are at Madras held always by the collectors of districts, who avowedly have no time to look properly after their duties in that department, an arrangement is proposed that seems to me very anomalous. The collectors are still to be the chief magistrates, they are to have the entire control over the police establishments. They are to receive the reports of crimes and the criminals as sent in from the interior of districts, but are to take no trouble to examine the cases. It is apparently assumed that they are too busy to decide on the important question of the release, punishment, or commitment to higher courts for trial of the persons so sent in, much more to pursue the clue of an intricate case of delinquency, to follow up intelligence of associations for crime, and effectually to protect the community.

The chief magistrate receiving the thana and tuhseeldars' reports is to pass order for this case to be taken or sent to the assistant judge, that to the sudder ameen, and is himself to take no further trouble about them; the officer to whom the cases are so handed over, is to decide and pass sentence if within his competency, if not, to commit for trial to the sessions judge of the district.

The Madras Foujdaree Court propose to abolish this intermediate reference of cases to assistant judges and sudder ameens, and to let the cases go at once to the sessions judge, who would send them down to be investigated and decided by the assistant judge or sudder ameen, or proceed with them himself. Mr. Bird would give to the district magistrate the power of punishing or committing if he think the prisoners guilty, thus compelling him to examine himself into cases.

The only objection that I can find urged to this last-mentioned palpable improvement of the process of trial, so far as concerns the ends of justice, is, that the collectors, being the magistrates, have not the time to investigate criminal cases and commit or release; but it appears to me singular that, making this admission, it has not occurred to the framers of the proposed Madras scheme, that under it there will be a considerable number of civil servants, now filling the situation of register or assistant judge, who will be thrown out of employment, and who might most advantageously for the public be vested with the separate charge of the magistracy in some, if not all of the 19 districts which compose the Madras presidency.

This is precisely the scheme which experience has brought the government of Bengal to establish in a large majority of its districts, and for which the special sanction of the Court of Directors has been solicited for that presidency.

Why, when we are re-casting the judicial establishments of Madras, should this separate provision for the important duties of police and magistracy, which are admitted to be much neglected at that presidency, have escaped the notice of the authorities so as not even to be discussed in any of the papers now before the government.

As far back as 1822–23, in a Minute of Mr. Fullarton discussing the merits of the scheme of Sir Thomas Munro, which he had assisted in establishing, and which had then been in force for several years, the principle was laid down, and the Court of Directors I believe, assented to it, that in allotting administrative duties, the best for the country and for the government would be to assign an educated officer of the superior class, that is, a civil servant in every district to each of the three duties, revenue, magisterial, and civil justice. It was only, he said, because of the insufficiency of the number of officers, and because of the expense, that the three duties were assigned to two officers, the magisterial

magisterial being, under the system of Lord Cornwallis, clubbed with civil justice, and in that of Sir Thomas Munro with revenue functions.

A scheme of re-cast is now proposed, which throws out of employment a number of officers sufficient to provide for a separate magistracy, and which will enable us to employ these officers in the particular branch required without any material addition to the present expense, because all the men excluded from the new appointments being incumbents, will be continued in their old salaries, and the government will have to create duties for them, or seek out for them employment in revenue details, which otherwise would be committed to inferior native officers.

I confess I look upon the scheme of the Law Commission as defective, from its not making provision for separation of the magistracy from the collector's office, and if the expense of maintaining separate officers for this branch as a permanent arrangement should deter the government, I would propose to meet it by abolishing all the assistant judges except those in charge of courts at out stations, whom I would make district judges without sessions powers, leaving nothing intermediate between the district civil judge and the principal sudder ameen.

I am well aware of the difficulty and objections that will be urged on the ground that the mofussil police being mainly under the tuhseeldars, it will not answer to make these serve two masters, and the power of appointing and dismissing officers of this class must of necessity be reserved to the revenue authorities.

All this is very true, and the government is of course not prepared for the expense of maintaining separate thanas and darogahs for the police all over the Madras presidency. But this difficulty I would meet by requiring tuhseeldars to report to the magistrate the naibs or officers of their establishments to whom the police duties were entrusted by them. These officers would conduct their police duties in subordination to the tuhseeldars, and being of their appointment would act well in concert with them. To the separate magistrates I would give the power of dismissing these naibs, and of requiring others to be appointed by the tuhseeldars and reported as in charge, but not that of direct nomination. I would further leave to the tuhseeldars, and to the collectors also, the power of sentence in petty cases, which they now possess; which powers might, I think, advantageously be exercised by many public officers, and resident gentlemen, and landed proprietors, subject to appeal, of course, to the sessions judge of the district, to whom the government would look for the control, under the Sudder at the presidency, of the entire judicial administration of the tract of country within his jurisdiction.

I am afraid that it is only creating delay to suggest this new plan, instead of confining myself to the particular suggestions and differences of opinion that are already before the Government, and that call for decision. I cannot, however, omit the occasion of putting on record my confirmed opinion in favour of having separate magistrates for the charge of each district, whose whole time and anxieties shall be given to the improvement of the police and suppression of crimes. This important duty must, I think, be neglected, if it is entrusted to officers who regard it as secondary.

With respect to the other points, I think it is very desirable that the provincial courts should be abolished, and civil and sessions courts be established in lieu of them, in every district. The Honourable Court of Directors have enjoined this, and whether the change be made specifically on the plan advocated by the Law Commission, or on that suggested by the Madras government and Sudder, to which Mr. Bird inclines, is comparatively of minor importance. If the opportunity be not taken of establishing a separate magistracy for each district of Madras, which I think ought to be done, and might be so at very small, if at any increased expense, I then should prefer in theory the plan of the Madras government and Sudder, in respect to criminal adjudications; but I do not see how the objection of the want of time, because of other duties more engrossing, is to be got over, so long as the police duties of the districts are entrusted to collector magistrates.

With respect to the employment of assessors or juries to assist the sessions judges on difficult and important trials, some provision is absolutely necessary, seeing the classes of persons who may possibly be brought up before the sessions judges for trial. Regulation VI. of 1832 is one of the worst-drawn laws

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laws in the Bengal Code, and is seldom if it has ever been brought into use; but some corresponding provision is necessary for Madras, and I doubt the expediency of adopting the assessor rules, as contained in Section 32 of the draft. I would have the jury to be substituted for the law officer, at the discretion of the sessions judge; and I would give to its verdict the same precise authority as the present law gives to the law officer's futwah, so as to leave the existing criminal law of the Madras presidency as little changed as possible, until the period shall arrive for recasting the entire law of India.

The change in the locality, constitution, and number of the courts, civil and criminal, need not produce, and certainly does not imply, any change in the administration and forms of justice; and it is much better that the one alteration should be effected under assurances that everything else will remain *in statu*, so that the vakeels and people may not suffer more inconvenience than is inevitable for the attainment of the purpose in view.

25 August 1841. (signed) *H. T. Prinsep.*

Legis. Cons. 29 Nov. 1841. No. 6. Madras Judicial System.

MINUTE by the Right honourable the Governor-general, dated 17th November 1841.

I HAVE carefully considered the propositions before me on this subject, which is no less important than it is pressing, and I have conferred on them with the officers near me, the best acquainted with the circumstances of the Madras presidency; and I now submit suggestions on each point of prominent interest, following in many respects the recommendations of Mr. Bird and Mr. Prinsep, and intended, with the modifications which we may resolve, upon further discussion, to adopt, to furnish hints for such a letter of instruction to the Madras government as may seem most likely to facilitate the disposal of a question so extensive. Upon points to which my remarks and suggestions do not refer, it will be understood that the decision upon the views of the Madras Sudder Court and of the Law Commissioners, whether these be in accordance or at variance with each other, is designed to be left to the local government.

I shall preface my suggestions by a few observations only, in regard to the extent and nature of the Madras judicial establishments, the modification of which is under discussion.

There are at Madras 12 provincial court judges.

There were originally 19 zillah judges in 19 districts. By the new arrangements respecting the hilly tracts of Ganjam and Vizagapatam, the remaining portions of these two out of the original 19 districts, have been formed into one zillah; so that, in the present plan for establishing a civil and session judge in every zillah, only 18 such judges are required.

In eight out of these nineteen districts, the office of zillah judge was abolished in 1821, and an assistant judge substituted in his place. The "assistant judge," though with a minor designation and emolument than the former zillah judge, has yet, since 1827, exercised the same jurisdiction. In one district, in lieu of an "assistant judge," a "native judge," latterly called a principal sudder ameen, was established, who has also exercised the same jurisdiction, except in special excepted cases. Thus the Madras principal sudder ameen, in the same manner as the zillah judge or the assistant judge, can award generally, a criminal sentence of six months' imprisonment, with commutations extending to imprisonment for a further period of six months, committing, like the zillah or assistant judge, cases of a graver kind for trial by the circuit court; and in regard to the particular crimes of burglary, or theft without open violence, he can, equally with the zillah or assistant judge, award a sentence of imprisonment for two years.

There are now, by additional appointments within districts, nine assistant judges and three principal sudder ameens employed in the Madras territories.

The actual establishment is thus:

Provincial court judges	12
Zillah judges	12
Assistant judges	9
Principal sudder ameens	3

And

And these judges of higher jurisdiction have below them,

Provincial court registers - - - - - -	3
Zillah registers - - - - - - - -	11

(These registers being civil servants.)

Sudder ameens - - - - - - -	*31 or 32
Moonsiffs - - - - - - - - -	*98

(District.)

For this establishment it is proposed to substitute (independently of any temporary provision for the disposal of existing arrears in the provincial courts),

Civil and session judges - - - - - - -	18
Assistant judges - - - - - - - -	13
Principal sudder ameens - - - - - -	10
Sudder ameens - - - - - - - -	34
Moonsiffs - - - - - - - - -	100

Upon this enumeration I would then say,

First, with Mr. Bird and Mr. Prinsep, that it seems highly desirable that we should get rid of the class of "assistant judges" altogether, and that we should introduce the great principle, long well established at Bombay, and nearly everywhere established in Bengal, of making over to uncovenanted judges (native or European) the duties of original jurisdiction, unless in cases reserved on very special grounds, and of confining the European covenanted judges to the decision of appeals, and to the functions of general control.

The great powers heretofore entrusted to the few principal sudder ameens employed at Madras, almost identical with those of the European zillah judges, will have in some measure prepared the way for such a change.

I learn from Mr. D. Eliott, the Madras member of the Law Commission, that he has become desirous to dispense with the restriction proposed in the Report of the Law Commissioners now before us (in conformity with that heretofore placed at Madras upon all judges, covenanted or uncovenanted, excepting judges of the provincial courts), and to give to the Madras assistant judges or principal sudder ameens original jurisdiction in suits as well above as under 5,000 rupees in value, thus bringing the Madras system in unison with that of Bengal and Bombay.

The objection which may be stated to the discontinuance of the grade of "assistant judge" is, that a sufficient number of qualified principal sudder ameens may not immediately be found to take the place of the assistant judges as above said; 23 officers in all, of both the grades, are proposed by the Law Commissioners, and there are as yet only three principal sudder ameens throughout the Madras districts.

On an objection of this nature the local government only can decide. The Madras Sudder Court recommend that seven new principal sudder ameens be appointed, so as to raise the number to 10. I should hope that with a subordinate native judicial service of at least 30 sudder ameens, and nearly 100 moonsiffs, (the last-mentioned being described to me as having been duly remunerated by salaries ranging in three grades, from 100 to 140 rupees a month, and as being of a generally fair character), little difficulty will be experienced in still further enlarging the number of principal sudder ameens; at least, I should confidently trust that it cannot, even now, be found necessary to add, as contemplated by the Sudder judges, to the number of covenanted assistant judges.

On the whole, I would, upon this point, empower the Madras government by law to appoint in each district, under the civil and session judges, assistant judges or principal sudder ameens (both classes of officers exercising the same powers), as may be deemed expedient, and I would instruct that government to enforce universally, with all the expedition that the means at its command will admit, the principle of employing native or other judges taken from the general community, in the subordinate though important jurisdiction here referred to, and of this eventually reserving the covenanted officers for the grade of civil and session judge exclusively.

This

* These numbers obtained in a memorandum from Mr. D. Eliott.

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This arrangement will assimilate the administration of Madras to that of all other parts of British India which are governed by fixed laws, and will, I am persuaded, be conducive alike to efficiency and economy.

2d. On the mode of bringing offenders for trial before the new session judges I feel an insuperable objection to the proposition for sending such cases directly from the police of the interior to those judges, without a previous sifting and arrangement of the evidence by another responsible party, and a regular commitment for trial, upon specified grounds, after such preliminary inquiry.

The Madras Sudder Court remark in support of this proposition, that, 1st, "It will bring higher qualifications to bear upon the preparation of the cases; and, 2dly, the preparation will be more exactly adapted to the trial, both being the work of the same person, who must know better than any other can know, what parts of the case require further elucidation for the full satisfaction of his own mind in the discovery of the truth."

But to me it appears obvious that this preparation of a case, involving the detection and pursuit of traces and suspicions of guilt, the active conduct, in fact, of a public prosecution, is wholly inconsistent with the calmness and impartiality requisite in a judge. These indispensable qualities on the judicial bench I would never, in this manner, put in hazard; the expedition which can be gained only at the risk of their loss would, in my judgment, be an expedition subversive of the first securities for justice.

The utmost that it seems to me the session judge could properly do towards causing deficiencies of evidence to be supplied is, by quashing the commitment, to remit a case, for that purpose, to the prosecuting officer, or, in rare instances, to cause a particular witness, who had been previously named, and whose evidence might be clearly and unquestionably essential, to be summoned before himself; such a procedure I understand to be usual in India judicial practice, though I apprehend that even this very guarded usage would be esteemed beyond the proper functions of a judge administering English law.

It is true that, as stated by the Madras Sudder Court, the course to which I am so decidedly opposed is now followed in cases coming for sentence before the Madras criminal and assistant judges, or principal sudder ameens, and before the magistrates who possess an extensive criminal jurisdiction in Bengal; but this union of prosecuting and judicial powers, to the degree to which it is carried, has always, I had thought, been regarded as a very lamentable defect in our Indian jurisprudence, and ought to be pointed out, not as an example to be imitated with a still more important description of trials, but as an error to be rectified at the earliest possible opportunity.

It is important to note that, as a consequence of the proposition for sending up cases directly from the police to the session judges, the Sudder Court at Madras observes, "a greater latitude must necessarily be given to the police as to the period within which proof of the graver crimes is to be completed;" that is, the wholesome restriction on the mofussil police, as to the time for which they may detain alleged offenders within their own custody, is to be abandoned. This result of the plan would seem to be, of itself, nearly a conclusive argument against its adoption.

Para. 8, of Proceedings, 14 Jan. 1841.

Comparatively little delay now arises in Bengal from sending up the commitment of a magistrate to the session judge at the same station, and we may be well satisfied if no greater delay should hereafter be incurred in the Madras districts.

In addition to the objections I have urged, upon higher grounds, against sending up cases for trial to the session judges without a previous inquiry and commitment, the Law Commissioners, as Mr. Prinsep remarks, are of opinion that the session judges could not undertake the mass of duty to be thus thrown upon them, without neglecting their functions of decision and control as civil judges.

I would assume then, upon these grounds, that there is to be a commitment in cases brought before the sessions courts, and would direct all attention to the proper determination of the officer in whom the duties of investigation and arrangement, connected with a commitment, may best be vested.

It is a peculiarity of the system in force at Madras, that the commitment to the higher court is there made, not by the magistrates, or by any officer exercising the powers of magistrates, but by a lower grade of judicial court, that is, as has been before said, by the criminal judge, or assistant judge, or principal sudder

sudder ameen. I should think it clearly better, on principle, that the commitment, involving intimate intercourse with the police and some efficient control over it, should be the act of some officer connected with the magistracy of the country than of any separate court, and the Law Commissioners also look to the eventual establishment of the office of public prosecutor for this duty. They point, however, to such a measure as a part only of such a general revision of all establishments as may not be practically undertaken for very many years to come.

The rule laid down in respect to commitments at Madras, is the same as that established in Bengal, namely, that they are to be made, not according to English practice, merely upon *primâ facie* sufficient informations or probable evidence, but strictly in no case "without a reasonable probability of conviction before the court of circuit," and after investigating fully the facts of the case, and a discretionary decision as to taking evidence on behalf of the accused.

Sec. 2, Reg. XIII. Madras Code, 1832.

The Law Commissioners considering it necessary to save the session judges from being borne down by the mass of work which would come upon them if commitments were entirely discontinued, and yet willing to throw upon them as much as they can undertake, recommend that the committing officers should confine themselves to requiring only *primâ facie* or probable evidence of guilt. I am very doubtful, however, of the expediency of sanctioning such a return to* former usage. It seems to me very desirable that the proceedings of the lower officers should be extremely careful and nearly complete, and that the time of the higher courts should not be taken up, excepting with cases in which there may be sufficient reason to anticipate a conviction.

My suggestion to meet the exigency would be framed upon that offered by Mr. Prinsep, and to this effect, that a number of officers of sufficient standing (these appear to be three provincial and eleven zillah registers, to be thrown out of employ by the change of judicial system, and therefore available for the purpose,) should be attached to the magistrates and collectors of districts, to aid them, especially in the police department, and to be charged with the preparation of commitments. This proceeding would be quite analogous to that followed in Bengal, where, on the abolition of registerships, the office of joint magistrate and deputy collector was created. A change of the Madras system of administration so radical as that of entirely separating the magistracy from the collectorship, I do not propose to discuss here, as such a discussion would only, I feel, prolong indefinitely the delay which has already occurred in acting on the repeated orders of the Honourable Court respecting the Madras judicatories. But the new joint magistrate at Madras (or the new officer to be appointed for the purpose, under whatever designation may be there preferred) will, by being in constant communication with the magistrate, and by being able to resort more easily than the court of the criminal or any other judge can do, to his influence and authority, will, I apprehend, have decidedly better facilities than now exist for stimulating and guiding the police in their duties of investigation. It might perhaps, also, I may in this place remark, remove a difficulty which has been raised in these discussions if the direct supervision of the gaol were principally vested in this new officer, so that the functions of the session judges in respect to gaols might be strictly those of inspection and control.

I trust, from the inquiries which I have been able to make here, that the adoption of this suggestion will not be found very difficult. If unforeseen obstacles should oppose it, the Madras government should then be requested to state what other plan seems to them the best for the proper conduct of the business of committing offenders for trial. I fear that the tuhseeldars and ameens of police in the Madras territories, though fairly paid and generally trusted officers, are not fit to be charged with the duty of committing offenders for trial on their own responsibility.

As a means of lightening the labours of the officers with the powers of criminal judges, Mr. Bird has proposed that the powers of the magistrates in Madras, which do not at present exceed those of an assistant in Bengal, should be raised to that of awarding imprisonment for six months, with a commutation for

* The present rule of a full inquiry before commitment was introduced in Bengal by Reg. VIII. 1830; in Madras by Reg. XIII. 1832.

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for fine to another six months' imprisonment, so as not to exceed a year's imprisonment in all. I think that this proposition might be adopted, if the local government should consider it indispensably necessary to their arrangements, without seriously violating the principle which forbids the union of prosecuting and adjudicating powers in the same officer; for, practically, in cases falling within this limited amount of punishment, the prosecution is conducted entirely by the police of the interior, and the magistrate would seldom do more than pass sentence upon the evidence sent before him. But I would not any further extend the judicial powers of magistrates, the general restriction of which at Madras is accordant with those sound maxims of jurisprudence, of which we must seek to enforce the observance as rapidly as we can throughout our territories. Upon the particular proposition and the general question to which this paragraph refers, I would specially invite the remarks of Mr. Amos, with reference to the powers of judicial punishment granted to magistrates by English practice.

The native judges at Madras have long been trusted with powers in criminal cases to a degree which I have much wished to see imitated in Bengal. I am entirely persuaded that the employment of native judges in the duties of criminal as well as of civil justice, is the only ground upon which we can hope to introduce a permanent and efficient reform of the former branch of our administration. Of the powers of principal sudder ameens at Madras, co-extensive with those of criminal judges, I have before spoken; and by Regulation III. of 1833, of the Madras Code, the sudder ameens are authorised "to exercise the powers conferred upon criminal judges," excepting only in cases committable for trial before the courts of circuit, and subject to the check that their judgments may be over-ruled (as those of a joint magistrate may be by a magistrate in Bengal) by those judges. As far as I can learn, the use of this jurisdiction by sudder ameens has been beneficial. I would invite the Madras government to consider whether, to the extent, at least in the first instance, of the power of imprisonment for a month possessed by our assistant magistrates, the district moonsiffs may not also be most usefully vested with criminal powers. It is to be remembered that it is of the first importance to give speedy justice on the spot in as many cases as possible, and certainly in cases of this minor class, which will otherwise be excessively harassing to prosecutors and witnesses, and that this object can only be attained by using the fixed local courts of the moonsiffs. I am aware that the tuhseeldars, and other heads of Madras district police, have now certain minor powers of punishment, as specified in the margin*; but these might be either taken away or allowed to remain, consistently with the somewhat increased jurisdiction proposed for moonsiffs, as the Madras government may think right.

Sec. 2.

It remains to notice more briefly the other points raised by these papers, on which some remark seems necessary. Of these, are,

3dly. Disposal of existing arrears in the provincial courts.

On this point the Law Commissioners propose to retain temporarily the services of four out of the twelve provincial court judges for the decision of the cases on the files of these courts. Mr. Bird thinks this measure unnecessary, and would transfer the cases, as was done in Bengal, to the file of the Sudder Court. It is to be remembered on this subject, that the transfer of the provincial court arrears to the Bengal Sudder file, certainly caused great inconvenience for a time in the Sudder Court, and that the Madras government may not be able immediately to provide for all the provincial court judges as civil and sessions judges of districts, in which case the employment of some of them in the disposal of these arrears may be certainly advantageous. I would refer the question, as one of local convenience and arrangement, to the Madras government.

4thly. Filing of original civil suits and distribution of criminal cases for trial.

The Law Commissioners and Madras Sudder Court appear to unite in wishing that civil suits and criminal cases should be, according to their degrees, brought as

* For thefts not exceeding five rupees, ten days' confinement, with labour. For other trivial offences, fine of three rupees, or three days' imprisonment.

as much as possible directly before the several classes of tribunals competent to try them. Mr. Bird is rather favourable to the plan of having all such suits and cases preferred in the first instance to the civil and sessions judges of districts, who would refer them, as they might think fit, to the different sub ordinate tribunals. I am inclined here to side with the Law Commissioners and Madras Sudder. It is already the practice at Madras that cases should, for the most part, be taken at once to the courts competent to try them. I do not see grounds for discontinuing that practice, especially as, in the revision of the Bengal Regulations, which was contemplated under the care of Mr. Millett, it was decided to abandon the contrary system, which prevails to a great extent in this presidency.

5thly. Execution of decrees.

I am disposed with the Law Commissioners to give a discretion by law which shall admit of the decrees of the civil and sessions judges being executed by the courts below them. It may often be very desirable to employ the inferior courts in the execution of duties of this description.

6thly. Special appeals.

I am inclined also with the Law Commissioners to keep the decision of special appeals as much as possible to the Sudder Court itself. It is evident that greatly less business is now performed by the Madras Sudder judges, than that which is disposed of by the Calcutta Sudder judges; and want of due leisure on the bench at Madras is not therefore much to be apprehended. It may be right to communicate to the Madras authorities the draft of a Special Appeal Act, lately proposed for the Bengal presidency, and to request their opinion on the adoption for Madras, either of that draft, or of any modification of it which may be submitted to us by the Law Commissioners, from whom an immediate report on the subject is expected.

7thly. Trial by assessors or jury.

Perhaps some misapprehension exists in the previous remarks recorded on this matter. The section (the 32d) of the draft Act prepared by the Law Commissioners, does not, I think, go beyond extending to Madras the Bengal Regulation VI. of 1832, a measure to which all authority appears favourable. That section may probably, therefore, be in substance approved by the Council and by the Madras government.

8thly. Financial result.

I observe that the saving estimated upon the execution of the arrangements now under discussion, as they were at first intended, was about two and a half lacks of rupees per annum. I would request from the Madras government a clear statement of the saving which will arise from the modified plans to be now referred to them, including the general employment of principal sudder ameens in the place of assistant judges, and the addition of officers with powers analogous to those of our joint magistrates to the establishments of the magistrates and collectors.

I do not find from my notes that there are any other topics to which I need particularly refer. I would, in making the communication which may be agreed upon to the Madras government, request of that government to have a revised draft of Act prepared, upon the principles to be explained to it, with such addition of detailed provisions as may be suggested by the draft of the Law Commissioners, or as may occur to the Madras authorities, such revised draft to be submitted to us, together with the draft of the Commissioners, in a comparative statement, showing, section by section, the differences between them, and the grounds for those differences, set forth as fully as the nature of each section may require.

I may use this opportunity to suggest, that it may be of advantage to communicate to the Madras Government the rules which are in force in Bengal for the examination of candidates for moonsiffships, and for the strict promotion of native judicial officers from the grade of moonsiff to that of principal sudder ameen. These rules may supply hints which may perhaps be found useful.

(signed) *Auckland.*

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Legis. Cons. 29 Nov. 1841. No. 7. Madras Courts.

MINUTE by the Honourable *A. Amos*, Esq., dated 20th November 1841.

1. THE first point for consideration is the accomplishment of a system, according to which all original civil jurisdiction shall be entrusted to uncovenanted principal sudder ameens, or sudder ameens and moonsiffs acting under them.

2. I think that this is a very desirable end to have in view; but it appears to me that in some respects we are pressing it a little too strongly on the local government. Mr. Elliot informs me, that if our recommendations were to have immediate effect to any great extent, the consequence would be, that a considerable number of covenanted servants would be thrown upon unemployed salary, and thus no great saving would be obtained, whilst the original civil business would be transacted by inferior agents. Whether this apprehension be well founded or not, must be obvious to the Madras government.

3. In pressing the accomplishment of this system, we should attribute some weight to the circumstance, that the generality of principal sudder ameens must be more incompetent than covenanted servants to deal with questions of English or general law, which may often come before them, and for the decision of which they will be the sole original tribunal; and what is of more moment, even the native community have much less confidence in the integrity of their countrymen than in that of covenanted judges. Upon the general principles of human nature, I should feel more secure of the impartiality of a judge in the covenanted service of the Company, than of another European who had not received the like education, was not bound by the same ties, and who was not looking forward to the same prospects. However, I only make these remarks in a cautionary spirit, for I agree that the system, as stated in the first paragraph, is that to which we ought, though cautiously, to approximate, notwithstanding the risks and inconveniences with which it may be attended.

4. The above system is rendered much more simple by taking from the civil and session judge all original civil jurisdiction whatever, and all business of reference to the principal sudder ameens.

5. Secondly. With regard to special appeals, I expect that the Law Commission will, in the course of the present week, send up a draft Act for special appeals applicable to the three presidencies, and of which the principle shall be, that special appeals shall be disposed of by the sudder court; the practical difficulty to be overcome is not to overburthen the sudder courts, and, in a word, to avoid this, to separate the law from the fact, and to send the law up, without the details of evidence, for revision.

6. Thirdly. With regard to commitments, I am in favour of not sending cases for trial to the superior court, unless when they are ready for hearing; and giving to the committing authority a power of discharging complaints which he deems to be clearly unfounded.

7. An assistant magistrate, for the purpose of commitments, is likely to work well; he will communicate more conveniently with the magistrate and police authorities than would be the case with the principal sudder ameens; and as principal sudder ameens have a considerable extent of criminal judicial power, it may be well to keep it apart from the power of commitment. It is to be observed, however, that if this alteration be made in the scheme of the Law Commissioners, a considerable additional expense will be incurred.

8. The magistrate should have a power of commitment to the superior criminal court, independently of the assistant magistrate.

9. It may deserve consideration, whether the assistant magistrate should not commit to the principal sudder ameen as well as to the sessions judge; the same objections apply, only in a smaller degree, to the police sending in their cases to the principal sudder ameen, who performs the double operation of preparing and trying the cases, which is objected to as regards the sessions judge. The extent of criminal jurisdiction given to the principal sudder ameen is not limited merely to those cases in which the inconveniences attending a commitment might operate as an encouragement to crimes.

10. Fourthly.

10. Fourthly. With regard to the judicial powers of magistrates, I think the power of the magistrate to punish crimes might be conveniently extended. The magistrate will be a preferable agent for trial to the principal sudder ameen, especially so long as cases do not go by commitment to the principal sudder ameen. It is not proposed to give to the magistrate even the power of punishing to the same extent as that exercised by the principal sudder ameen. I see no reason for this difference, so long as cases do not go by commitment to the principal sudder ameen. I think that magistrates, and perhaps the assistant magistrate also, should have some judicial power, say to the amount of six months' imprisonment. This is doubtless an infringement of the salutary principle of keeping apart the functions of police and judicature; but I apprehend there is a large class of minor criminal offences which cannot otherwise be so effectually repressed.

11. Most probably the Madras authorities will inform us, that we must not make the duty of trying offences imperative upon magistrates, if we enlarge their judicial powers in criminal cases. We may probably be told, that we should reason erroneously, if we assumed that the duties of a collector (acting also as magistrate) did not, in the Madras presidency, engross much more of his time than they do in Bengal; and although the Madras magistrates can conveniently manage police business, yet that any considerable addition of judicial business would be impracticable.

12. As to the separation of the offices of collector and magistrate, this important question may be more conveniently considered on a future occasion; for in the Madras presidency, according to the ancient customs of the country, the revenue officers have, from time immemorial, been the police officers; and in separating the collector from the magistrate, we should have further to reconstruct each department entirely.

13. Fifthly. With regard to the criminal judicial powers of moonsiffs, a fixed and a proximate tribunal are matters of such vital importance in criminal procedure, that I am disposed strongly to favour the experiment of conferring some powers of criminal judicature on the district moonsiffs. They will, of course, require to be very strictly watched. As I understand they are, at present, very fully engaged with their civil business, it may be necessary to add largely to their number. Mr. Elliot thinks that sudder ameens might be got rid of, and their duties entrusted to moonsiffs, which would be a pecuniary saving.

14. I do not think it necessary to advert, on this occasion, to any other parts of the subject (some points relative to the manner in which the subject of appeals to the Privy Council is connected with these questions, will be noticed in the forthcoming Report on special appeals), but will add a few remarks on the Report of the Law Commission. The attention of the Commissioners was exclusively confined to the suppression of the provincial courts, effecting at the same time as little change of system as possible beyond the attainment of that object. They reserved any further change until it could be made general, provided it could expediently so be made, for all the presidencies.

15. The Minutes of Council have gone deeply into the code of procedure, upon various points which have not been reported on by the Law Commission. I am glad, however, that this course has been taken, because I have found that the most expeditious way of our obtaining benefit from the labours of the Law Commission is to lead the way by a legislative Act embracing some comprehensive section of procedure, and requiring the Law Commission to report upon it within a given time. With this view, I presented to Council the draft Acts upon the examination of absent witnesses, special appeals, and the limitation of actions; and by such means, in another week, I think it may be said that these important sections of the code of procedure will have been finished for all the presidencies by the Law Commission. The present papers will, in this point of view, be still more useful; for what, from my first joining the Commission, I have been most anxious to obtain, is a general chart or scheme which shall state what number, and what kinds of courts, civil and criminal, shall be constituted; which shall have appellate, and which original jurisdiction; what shall be the respective extents of the jurisdiction in point of amount or locality; what shall be the qualifications for judges, by whatever name called; what shall be the functions and limits of jurisdiction of magistrates; what authorities shall have control,

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control, and what species of control, in judicial matters, over others. It appears to me that the investigation of the present question will speedily decide half these points for Madras. The Commission can then be called upon to say why the Act to be passed should not afterwards be extended to the whole of India, or what modifications may be necessary? The answer would in fact be a very material part of a code of procedure.

(signed) *A. Amos.*

(No. 188.)

Legis. Cons. 29 Nov. 1841. No. 8.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *W. Elliot*, Esq. Acting Secretary to the Government of Fort St. George.

Legislative Dept.

Sir,

THE Governor-general in Council has maturely considered the opinions on the better constitution of the judicial courts of the Madras presidency, submitted with Mr. Chief Secretary Chamier's letter of 23d February last; and I am now desired to forward copies of a correspondence with the Indian Law Commissioners, consequent on the receipt of that letter, and to convey to you the following observations and instructions of his Lordship in Council. Upon points on which no remarks and suggestions are now made, it will be understood that the decision upon the views of the Madras Sudder Court and of the Law Commissioners, whether these be in accordance or at variance with each other, is designed to be left to the Madras government.

2. It may be convenient to give, in the first instance, a brief statement in regard to the extent and nature of the Madras judicial establishments, the modification of which is under discussion.

3. There are at Madras 12 provincial court judges.

4. There were originally 19 zillah judges in 19 districts. By the new arrangements respecting the hilly tracts of Ganjam and Vizagapatam, the remaining portions of these two, out of the original 19 districts, have been formed into one zillah; so that, in the present plan for establishing a civil and session judge in every zillah, only 18 such judges are required.

5. In eight out of these 19 districts the office of zillah judge was abolished in 1821, and an assistant judge substituted in his place. The "assistant judge," though with a minor designation and emolument than the former zillah judge, has yet, since 1827, exercised the same jurisdiction. In one district, in lieu of an "assistant judge," a "native judge," latterly called a principal sudder ameen, was established, who has also exercised the same jurisdiction, except in special excepted cases. Thus the Madras principal sudder ameen, in the same manner as the zillah judge or the assistant judge, can award, generally, a criminal sentence of six months' imprisonment, with commutations extending to imprisonment for a further period of six months, committing, like the zillah or assistant judge, cases of a graver kind for trial by the circuit court; and in regard to the particular crimes of burglary or theft without open violence, he can, equally with the zillah or assistant judge, award a sentence of imprisonment for two years.

6. There are now, by additional appointments within districts, nine assistant judges and three principal sudder ameens employed in the Madras territories.

7. The actual establishment is thus:—

Provincial court judges	12
Zillah judges	12
Assistant judges	9
Principal sudder ameens	3

And these judges of higher jurisdiction have below them:

Provincial court registers	3
Zillah registers	11

(These

(These registers being civil servants.)

Sudder ameens	*31 or 32
Moonsiffs (district)	*98

8. For this establishment it is proposed to substitute (independently of any temporary provision for the disposal of existing arrears in the provincial courts):—

Civil and session judges	18
Assistant judges	13
Principal sudder ameens	10
Sudder ameens	34
Moonsiffs	100

9. Upon this enumeration his Lordship would observe, first, that it seems highly desirable to get rid of the class of "assistant judges" altogether, and to introduce at Madras the great principle, long well established at Bombay, and nearly everywhere established in Bengal, of making over to uncovenanted judges (native or European) the duties of original jurisdiction, unless in cases reserved on very special grounds, and of confining the European covenanted judges to the decision of appeals, and to the functions of general control.

10. The great powers heretofore entrusted to the few principal sudder ameens employed at Madras, almost identical with those of the European zillah judges, will have in some measure prepared the way for such a change.

11. It is understood that the Law Commissioners may now be disposed to dispense with the restriction proposed in their Report, forwarded with this letter (in conformity with that heretofore placed at Madras upon all judges, covenanted or uncovenanted, excepting judges of the provincial courts), and to give to the Madras assistant judges or principal sudder ameens original jurisdiction in suits as well above as under 5,000 rupees in value; thus bringing the Madras system in unison with that of Bengal and Bombay.

12. The objections which may be stated to the immediate discontinuance of the grade of "assistant judge" are, that a sufficient number of qualified principal sudder ameens may not at once be found to take the place of the assistant judges, and that it may be useful and proper to employ temporarily, as they are now employed, the services of the civil officers holding the situation of assistant judge, since they can only be gradually transferred to other appointments, and would otherwise have to be placed on unemployed salaries.

13. As above said, 23 officers in all, of both the grades, are proposed by the Law Commissioners, and there are as yet only three principal sudder ameens throughout the Madras districts.

14. On objections of this nature the local government only can decide. The Madras Sudder Court recommend that seven new principal sudder ameens be appointed, so as to raise the number to 10. The Governor-general in Council would hope that, with a subordinate native judicial service of at least 30 sudder ameens, and nearly 100 moonsiffs (the last mentioned being described as having been duly remunerated by salaries ranging in three grades from 100 to 140 rupees a month, and as being of a generally fair character), little difficulty will be experienced in still further enlarging the number of principal sudder ameens; at least he would confidently trust that it cannot, even now, be found necessary to add, as contemplated by the sudder judges, to the number of covenanted assistant judges.

15. On the whole, his Lordship in Council would, upon this point, empower the Madras government by law to appoint, in each district, under the civil and session judges, assistant judges, or principal sudder ameens (both classes of officers exercising the same powers), as may be deemed expedient, and he would now instruct that government to enforce universally, with all the expedition that the means at its command will admit, and that may be consistent with a just regard to public economy and to the claims and qualifications of individuals,

* These numbers obtained in a memorandum from Mr. D. Eliott.

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individuals, the principle of employing native or other judges, taken from the general community, in the subordinate though important jurisdiction here referred to, and of thus eventually reserving the covenanted officers for the grade of civil and session judge exclusively.

16. This arrangement will assimilate the administration of Madras to that of all other parts of British India which are governed by fixed laws, and will, his Lordship in Council is persuaded, be conducive in its permanent results alike to efficiency and economy.

17. Secondly. On the mode of bringing offenders for trial before the new session judges, his Lordship in Council feels an insuperable objection to the proposition for sending such cases directly from the police of the interior to those judges, without a previous sifting and arrangement of the evidence by another responsible party, and a regular commitment for trial, upon specified grounds, after such preliminary inquiry.

18. The Madras Sudder Court remark, in support of this proposition, that, "1st, It will bring higher qualifications to bear upon the preparation of the cases; and, 2dly, the preparation will be more exactly adapted to the trial, both being the work of the same person, who must know better than any other can know what parts of the case require further elucidation for the full satisfaction of his own mind in the discovery of the truth."

19. But to his Lordship in Council it appears that this preparation of a case, involving the detection and pursuit of traces and suspicions of guilt, the active conduct, in fact, of a public prosecution, is wholly inconsistent with the calmness and impartiality requisite in a judge. These indispensable qualities on the judicial bench he would never in this manner put in hazard. The expedition which can be gained only at the risk of their loss, would, in his judgment, be an expedition subversive of the first securities for justice.

20. The utmost that it seems to him the session judge could properly do towards causing deficiencies of evidence to be supplied, is, by quashing the commitment, to remit a case for that purpose to the prosecuting officer, or, in rare instances, to cause a particular witness, who had been previously named, and whose evidence might be clearly and unquestionably essential, to be summoned before himself. Such a procedure is understood to be usual in Indian judicial practice, though even this very guarded usage might be esteemed beyond the proper functions of a judge administering English law.

21. It is true that, as stated by the Madras Sudder Court, the course to which his Lordship in Council is opposed is now followed in cases coming for sentence before the Madras criminal and assistant judges, or principal sudder ameens, and before the magistrates who possess an extensive criminal jurisdiction in Bengal. But this unison of prosecuting and judicial powers, to the degree to which it is carried, has always been regarded as a very lamentable defect in our Indian jurisprudence, and ought to be pointed out, not as an example to be imitated with a still more important description of trials, but as an error to be rectified at the earliest possible opportunity.

22. It is important to note that, as a consequence of the proposition for sending up cases directly from the police to the session judges, the Sudder Court at Madras observe, "a greater latitude must necessarily be given to the police as to the period within which proof of the graver crimes is to be completed." If from this it is to be implied, that the wholesome restriction on the mofussil police, as to the time for which they may detain alleged offenders within their own custody, is to be abandoned, such a result of the plan would seem to be, of itself, nearly a conclusive argument against its adoption.

Para. 8, of Proceedings, 14 Jan. 1841.

23. Comparatively little delay now arises in Bengal from sending up the commitment of a magistrate to the session judge at the same station, and the Government may be well satisfied if no greater delay should hereafter be incurred in the Madras districts.

24. In addition to the objections here urged, upon higher grounds, against sending up cases for trial to the session judges without a previous inquiry and commitment, the Law Commissioners are of opinion, that the session judges could

could not undertake the mass of duty to be thus thrown upon them, without neglecting their functions of decision and control as civil judges.

25. Assuming then, upon these grounds, that there is to be a commitment in cases brought before the sessions courts, his Lordship in Council would direct all attention to the proper determination of the officer in whom the duties of investigation and arrangement connected with a commitment may best be vested.

26. It is a peculiarity of the system in force at Madras, that the commitment to the higher court is there made, not by the magistrates, or by any officer exercising the powers of magistrates, but by a lower grade of judicial court, that is, as has been before said, by the criminal judge, or assistant judge, or principal sudder ameen. It would appear clearly better, on principle, that the commitment, involving intimate intercourse with the police, and some efficient control over it, should be the act of some officer connected with the magistracy of the country, than of any separate court; and the Law Commissioners also look to the eventual establishment of the office of public prosecutor for this duty. They point, however, to such a measure as a part only of such a general revision of all establishments as may not be practically undertaken for several years to come.

27. The rule laid down in respect to commitments at Madras is the same as that established in Bengal, namely, that they are to be made, not according to English practice, merely upon *primâ facie* sufficient informations or probable evidence, but strictly, in no case, "without a reasonable probability of conviction before the court of circuit," and after "investigating fully" the facts of the case, and a discretionary decision as to taking evidence on behalf of the accused.

Sec. 2, Reg. XIII 1832, Madras Code.

28. The Law Commissioners considering it necessary to save the session judges from being borne down by the mass of work which would come upon them if commitments were entirely discontinued, and yet willing to throw upon them as much as they can undertake, recommend that the committing officers should confine themselves to requiring only *primâ facie* or probable evidence of guilt. His Lordship in Council is very doubtful, however, of the expediency of sanctioning such a return to former* usage. It seems to him very desirable that the proceedings of the lower officers should be extremely careful and nearly complete, and that the time of the higher courts should not be taken up, excepting with cases in which there may be sufficient reason to anticipate a conviction.

29. The suggestion of the Governor-general in Council to meet the exigency would be to this effect: that a number of officers, of sufficient standing (there appear to be three provincial and 11 zillah registers to be thrown out of employ by the change of judicial system, and therefore available for the purpose), should be attached to the magistrates and collectors of districts, to aid them, especially in the police department, and to be charged with the preparation of commitments. This proceeding would be quite analogous to that followed in Bengal, where, on the abolition of registerships, the office of joint magistrate and deputy collector was created. A change of the Madras system of administration so radical as that of entirely separating the magistracy from the collectorship, his Lordship in Council does not propose to discuss here, as such a discussion would only, he feels, prolong indefinitely the delay which has already occurred in acting on the repeated orders of the Honourable Court respecting the Madras judicatories. But the new joint magistrate at Madras (or the new officer to be appointed for the purpose, under whatever designation may be there preferred), by being in constant communication with the magistrate, and by being able to resort, more easily than the court of the criminal or any other judge can do, to his influence and authority, will, it is apprehended, have decidedly better facilities than now exist for stimulating and guiding the police in their duties of investigation. It might, perhaps, also, his Lordship

* The present rule of a full inquiry before commitment was introduced in Bengal by Reg. VIII. 1830; in Madras by Reg. XIII. 1832.

Lordship in Council would in this place remark, remove a difficulty which has been raised in these discussions, if the direct supervision of the gaol were principally vested in this new officer, so that the functions of the session judges in respect to gaols might be strictly those of inspection and control.

30. The Governor-general in Council trusts, from the inquiries which he has been able to make here, that the adoption of this suggestion will not be found very difficult. If unforeseen obstacles should oppose it, the Madras government are requested to state what other plan seems to them the best for the proper conduct of the business of committing offenders for trial. His Lordship in Council fears that the tuhseeldars and ameens of police in the Madras territories, though fairly paid, and generally trusted officers, are not fit to be charged with the duty of committing offenders for trial on their own responsibility.

31. If the scheme of employing joint or assistant magistrates be adopted, it will deserve consideration whether these officers should not, in the more serious of the cases falling within his limit of authority, commit to the principal sudder ameen, who has a high criminal jurisdiction, as well as to the session judge; the same objections applying, though of course in a smaller degree, to the police sending in their cases to the principal sudder ameen, who performs the double operation of preparing and trying the cases, as have been stated in regard to the direct communication of the police with the session judges.

32. Upon this scheme it is also to be noted, that it will be expedient clearly to provide that the magistrate will always retain a power of direct commitment to the superior criminal courts, independently of the joint or assistant magistrate.

33. As a means of lightening the labours of the officers with the powers of criminal judges, it has been proposed, in the discussions of the Supreme Government, that the powers of the magistrates (and of the new assistant or joint magistrates) in Madras, which do not at present exceed those of an assistant in Bengal, should be raised to that of awarding imprisonment for six months, with a commutation for fine to another six months' imprisonment, so as not to exceed a year's imprisonment in all. His Lordship in Council thinks that this proposition might be adopted, if the local government should consider it indispensably necessary to their arrangements, without seriously violating the principle which forbids the union of prosecuting and adjudicating powers in the same officer; for, practically, in cases falling within this limited amount of punishment, the prosecution is conducted entirely by the police of the interior, and the magistrate would seldom do more than pass sentence upon the evidence sent before him. But his Lordship in Council would not any further extend the judicial powers of magistrates, the general restriction of which at Madras is accordant with those sound maxims of jurisprudence, of which the Government must seek to enforce the observance, as rapidly as the Government can, throughout their territories.

34. The native judges at Madras have long been trusted with powers in criminal cases to a considerable degree, and his Lordship in Council is of opinion that the employment, though in a guarded and progressive manner, of native judges in the duties of criminal as well as of civil justice is the only ground upon which the Government can hope to introduce a permanent and efficient reform of the former branch of their administration. The powers of principal sudder ameens at Madras, co-extensive with those of criminal judges, have been before mentioned; and, by Regulation III. of 1833 of the Madras Code, the sudder ameens are authorised "to exercise the powers conferred upon criminal judges," excepting only in cases committable for trial before the courts of circuit, and subject to the check that their judgments may be over-ruled (as those of a joint magistrate may be by a magistrate in Bengal) by those judges. As far as is known, the use of this jurisdiction by sudder ameens has been beneficial. Considering the establishment of fixed and proximate tribunals to be a matter of vital importance in criminal procedure, his Lordship in Council would now invite the Madras government to consider whether, to the extent, at least in the first instance, of the power of imprisonment for a month, possessed by Bengal assistant magistrates, the district moonsiffs may not also be most usefully vested with criminal powers. His Lordship in Council is aware that the tuhseeldars, and other heads of Madras district police, have now certain minor

Sec. 2.

powers

powers of punishment, as specified in the margin ;* but these might be either taken away or allowed to remain, consistently with the somewhat increased jurisdiction proposed for moonsiffs, as the Madras government may think right. If the additional duty to be thus imposed on moonsiffs should require any addition to the number of officers of that class, it will be for consideration whether the funds might not be provided by discontinuing the grade of sudder ameen, the retention of which may seem unattended with adequate advantage.

35. It remains to notice more briefly the other points raised by these papers, on which some remark seems necessary.

36. Of these are, Thirdly, Disposal of existing arrears in the provincial courts.

37. On this point the Law Commissioners propose to retain temporarily the services of four out of the 12 provincial court judges, for the decision of the cases on the files of these courts. On the other hand, this measure may be thought unnecessary, and it might be desired to transfer the cases, as was done in Bengal, to the file of the Sudder Court. It is to be remembered on this subject, that the transfer of the provincial court arrears to the Bengal Sudder file certainly caused great inconvenience for a time in the Sudder Court, and that the Madras government may not be able immediately to provide for all the provincial court judges, as civil and sessions judges of districts, in which case the employment of some of them in the disposal of these arrears may be certainly advantageous. His Lordship in Council would refer the question, as one of local convenience and arrangement, to the Madras government.

38. Fourthly. Filing of original civil suits and distribution of criminal cases for trial.

39. The Law Commissioners and Madras Sudder Court appear to unite in wishing that civil suits and criminal cases should be, according to their degrees, brought as much as possible directly before the several classes of tribunals competent to try them; another plan is to have all such suits and cases preferred in the first instance to the civil and sessions judges of districts, who would refer them, as they might think fit, to the different subordinate tribunals. His Lordship in Council is inclined to concur with the Law Commissioners and Madras Sudder. It is already the practice at Madras that cases should, for the most part, be taken at once to the courts competent to try them, and there do not seem grounds for discontinuing that practice, especially as, in the revision of the Bengal Regulations which was contemplated under the care of Mr. Millett, it was decided to abandon the contrary system, which prevails to a great extent in this presidency.

40. Fifthly. Execution of decrees.

41. His Lordship in Council is disposed, with the Law Commissioners, to give a discretion by law which shall admit of the decrees of the civil and sessions judges being executed by the courts below them. It may often be very desirable to employ the inferior courts in the execution of duties of this description.

42. Sixthly. Special appeals.

43. His Lordship in Council is inclined also, with the Law Commissioners, to keep the decision of special appeals as much as possible to the Sudder Court itself. It is evident that greatly less business is now performed by the Madras Sudder judges than that which is disposed of by the Calcutta Sudder judges, and want of due leisure on the bench at Madras is not, therefore, much to be apprehended. His Lordship in Council will, at an early period, communicate to the Right honourable the Governor in Council a series of papers on a revised law of special appeal, and request his opinion on the adoption of that law at Madras.

44. Seventhly. Trial by assessors or jury.

45. The

* For thefts not exceeding five rupees, ten days' confinement, with labour. For other trivial offences, a fine of three rupees, or three days' imprisonment.

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45. The Section (the 32d) of the draft Act prepared by the Law Commissioners does not, his Lordship in Council observes, go beyond extending to Madras the Bengal Regulation VI. of 1832, a measure to which all authority appears favourable; that Section may probably therefore be approved by the Madras government.

46. Eighthly. Financial result.

47. The Governor-general in Council observes that the saving estimated upon the execution of the arrangements now under discussion, as they were at first intended, was about 2½ lakhs of rupees per annum; he would request from the Madras government a clear statement of the saving which will arise from the modified plans now referred to them, including the general employment of the principal sudder ameens in the place of assistant judges, and the addition of officers with powers analogous to those of our joint magistrates, to the establishments of the magistrates and collectors.

48. His Lordship in Council would further request from the Madras government that they cause a revised draft of Act to be prepared, upon the principles here explained, with such addition of detailed provisions as may be suggested by the draft of the Law Commissioners, or as may occur to the Madras authorities; such revised draft to be submitted to the Supreme Government, together with the draft of the Commissioners, in a comparative statement, showing, section by section, the differences between them, and the grounds for those differences, set forth as fully as the nature of each section may require.

49. His Lordship in Council would use this opportunity to communicate to the Madras government the rules which are in force in Bengal for the examination of candidates for moonsiffships, and for the strict promotion of native judicial officers from the grade of moonsiff to that of principal sudder ameen. These rules may supply hints which may perhaps be found useful.

I have, &c.

Fort William,
29 November 1841.

(signed) *T. H. Maddock*,
Secretary to the Government of India.

— (C.) No. IV. —

ON SLAVERY IN THE STRAITS SETTLEMENTS.

(C.) No. IV.
Slavery in the Straits Settlements.

Legis. Cons.
25 October 1841.
No. 1.

(No. 145.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to Indian Law Commissioners.

Gentlemen,

With reference to pp. 171 to 182 of your printed Report on Slavery, dated 15 January 1841, I am desired by the Right hon. the Governor-general of India in Council to forward to you the accompanying copies of a despatch from the Honourable the Court of Directors, dated 25 August 1841, No. 16, and its enclosure, and to request that you will favour his Lordship in Council with any explanation which you may be able to afford, and a report of the measures which you may deem it expedient to propose on the subject therein discussed. A copy of the despatch of the Honourable Court will be immediately communicated to the Governor of the Straits Settlements, who will be requested to give in return such remarks and statement of facts as may fully elucidate the subject.

I have, &c.

Council Chamber,
25 Oct. 1841.

(signed) *T. H. Maddock*,
Sec^{y} to Gov^{t} of India.

(C.) No. IV.
Slavery in the Straits Settlements.

(No. 175.)

Legis. Cons. 25 October 1841. No. 2.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to Governor of the Straits Settlements.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to forward to you the accompanying copy of a despatch from the Honourable the Court of Directors, dated 25 August 1841, No. 16, and its enclosure, and to request the favour of your furnishing, at your earliest convenience, a statement of facts, with such remarks as may serve fully to elucidate the subject.

I have, &c.

Council Chamber, 25 Oct. 1841.

(signed) *T. H. Maddock*, Sec^y to Gov^t of India.

Legis. Cons. 6 December 1841. No. 11.

From the Indian Law Commission to the Right honourable the Earl of *Auckland*, G.C.B. Governor-general of India, in Council.

WE have the honour to acknowledge the receipt of Mr. Secretary Maddock's letter, dated the 25th ultimo, and of its enclosures, being a copy of a despatch from the Honourable the Court of Directors, dated 25 August 1841; and a copy of a memorial addressed to the President of the Board of Commissioners for the Affairs of India, on the part of the British and Foreign Anti-Slavery Society, relative to the prevalence of slavery in the settlements of Penang and province Wellesley, Malacca and Singapore.

2. In our General Report upon Slavery, referred to in the letter abovementioned, we showed that slavery had not been recognised as a legal condition in Penang since 1820, and that it was equally contrary to law in the dependent province Wellesley, though there might be some persons there held in slavery illicitly, for which facility was afforded by the vicinity of the Siamese territory. p. 171 to 178.

3. The minute of "the late president of Penang," written in 1830, which is quoted in the memorial, is also referred to and quoted in our Report. It relates to "slave debtors." It will be observed, that the passage of the Minute cited in our Report, is the same as is cited in the memorial. It is remarkable that the memorialists having given the president's denunciation of the practice of importing slave-debtors as one "which, however conducted in form, is in reality slave-dealing, forbidden by law," have omitted to mention the proceeding that followed, which is thus stated in our Report: "It was accordingly ordered by the government, that a proclamation should be published, declaring the practice of importing and employing persons under the denomination of "slave-debtors," being "in reality only a cover to actual slave-dealing," to be an offence against the Act 5 Geo. 4, c. 113, and notifying, "that all persons offending in this respect would subject themselves, on discovery, to the penalties laid down in the Act." pp. 180, 181.

4. It was observed by the government of Penang, in 1820, that a British court of justice, which had entire jurisdiction over the island and its dependencies, could "never recognise such a being as a slave." With respect to slave-debtors, it was remarked by the government in the Minute written in 1830, already referred to, that "there can be no doubt that all so situated are *ipso facto* free, and that no one could, from such a transaction, establish any legal claim to their service against their consent." For reasons stated in our Report, the government was content with adopting the means within its power for preventing the further importation of slave-debtors without interfering directly to change the condition of those actually in that kind of service, leaving this to be effected gradually by the magistrates on complaints preferred to them.

5. In Lowe's account of Penang, published in 1836, quoted in our Report, slavery is spoken of as extinct, and it is stated that the system of debtor service which had been substituted for it, as explained in the Report, seemed to be dying a natural death. Mr. W. R. Young, the late Commissioner for the Straits, also states, that "there is no slavery in Penang." App. I. to Slavery Report, para. 65.

6. With

(C.) No. IV.
Slavery in the Straits Settlements.

6. With regard to Malacca, the memorialists refer to an opinion recorded by Mr. Garling, resident councillor, in 1829, "that local slavery had no legal existence" there, in which opinion they say he was fully borne out by the government. But they omit to mention what is recorded in the Parliamentary Papers, which it would seem they had before them, and is noticed in our Report, that the local executive and judicial authorities, the advocate-general in Bengal, and the Supreme Government, finally agreed in recognising the legitimacy of the slavery existing before the cession of the settlements, according to the registers of the Netherlands government; or, to use the words of the advocate-general, that "those persons who were slaves, and entered as such in the register under the government of the Netherlands, are legally to be considered in a state of slavery since the transfer of that place to the British authority and the establishment of an English court of justice."

7. It is stated by the memorialists, that "in 1829, the holders of slaves feeling the uncertain tenures by which they held them in bondage, and anxious to secure their services to as late a period as possible, passed certain resolutions, to the effect that 'slavery shall not be recognised in the town and territory of Malacca, after the 1st (31st) December 1841.'" In our Report, it is shown that the principal inhabitants had previously agreed, in 1819, that all children born of slaves after that period should be free; and that in 1829, at the instance of the governor, they were led to take into consideration the best mode of abolishing slavery entirely, and finally passed the resolution above cited. The time (31 December 1841) will immediately arrive when, according to that resolution, slavery should be at an end; and it will be for the Supreme Government to judge, upon the reports that may be received from the local authorities, whether there is a necessity to interfere legislatively to give effect to it.

p. 180.

Report of Mr. Raffles, agent to the Governor-general, 10 June 1811. Life of Sir S. Raffles, p. 78, 79.

8. We may observe that, in 1811, all the government slaves at Malacca were emancipated by orders of the Governor-general of India.

9. With regard to Singapore, we observed in our Report, that as the settlement had been established long after the slave trade had been abolished by Act of Parliament, no slaves could have been introduced there legally, and that as the island was previously inhabited only by a few Malay fishermen, it might be presumed that none were found there on its establishment. Sir Stamford Raffles, in a private letter written in 1823, made the following observations:—"This establishment was formed long after the enactment of the British Legislature which made it felony to import slaves into a British colony, and both importers and exporters are alike guilty, to say nothing of the British authority who countenanced the trade. The acknowledgment of slavery in any shape in a settlement like Singapore, founded on principles so diametrically opposed to the admission of such a practice, is an anomaly in the constitution of the place which cannot, I think, be allowed to exist." Accordingly, to the sentiments thus expressed, on the 1st May 1823, in his capacity of Lieutenant-governor of Fort Marlbro' and its dependencies, Sir S. Raffles passed a Regulation (No. V. of 1823) for the prevention of the slave trade at Singapore, in which it was declared, that "as the condition of slavery under any denomination whatever cannot be recognised within the jurisdiction of the British authority, all persons who may have been so imported, transferred, or sold as slaves, or slave-debtors, since the 26th February 1819, are entitled to claim their freedom on application to the magistrates;" and that, for the future, "no individual can be imported for sale, transferred, or sold as a slave or slave-debtor; or, having his or her fixed residence under the protection of the British authorities at Singapore, can be considered or treated as a slave, under any denomination, colour, or pretence whatever." And in a scale of crimes and punishments prepared by him, "slave-dealing" is mentioned, the penalties for British-born subjects being those prescribed by the several Acts of the British Parliament for the abolition of the slave trade, and for other persons loss of property in the slave, and fine and imprisonment, at the discretion of the court."

Life, p. 538.

10. The memorialists say, that they regret to observe that Singapore affords "the best market for slaves;" but the authority they refer to does not bear them out, as it relates to a period anterior to 1830, before the government issued the proclamation above cited, declaring the practice of importing slave-debtors

debtors to be an offence against the Slave Trade Act, 5 Geo. 4, c. 113. This proclamation, it appears from Mr. Young's Evidence in the Appendix to our Report, has been observed, and, with a court administering English law, under the guidance of an English professional judge, we cannot doubt that the provisions of the Act to which it refers are duly enforced.

11. The proclamation, Mr. Young states, is not understood to include the case of the Chinese emigrants who are imported under contracts to serve for a term some person who will pay for their passage; and it appears from the minute of the Governor in 1830, that it was not intended to apply to such cases, it being understood that the Chinese were fully aware of the nature and conditions of the contracts they entered into, and were not likely to suffer by being overreached in them. Report, p. 180.

12. On the whole, it does not appear that anything further is required to be done by government, in its legislative capacity, for the suppression of slavery in the settlements of Penang and Singapore.

13. With regard to Malacca, as before observed, it is yet to be ascertained whether the resolution agreed to by the inhabitants in 1829 is operative.

14. Wherever bond-service exists in these settlements, we meant the rules recommended in our Report to be applied there, as well as in other parts of the territories under the Government of India.

We submit this our Report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
20 November 1841.

(No. 192.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *S. G. Bonham*, Esq. Governor of the Straits Settlements.

Legis. Cons. 6 December 184 No. 12.

Sir,

In continuation of my letter, No. 175, dated 25th October last, I am directed by the Right honourable the Governor-general in Council, to transmit to you the accompaning copy of a Report, dated the 20th ultimo, from the Indian Law Commissioners, on Slavery in the Straits Settlements, with reference to the despatch from the Honourable the Court of Directors of 25th August 1841, of which a copy has been already furnished you, and to request that you will favour his Lordship in Council with your opinion on the points adverted to in that Report, together with any additional information which you may be able to supply.

Legis.

I have, &c.

(signed) *T. H. Maddock,*
Secy to the Government of India.

Fort William,
6 December 1841.

—(C.) No. V.—

ON SPECIAL APPEALS.

(C.) No. V.
Special Appeals.

Legis. Cons.
5 April 1840–41.
No. 1.

(No. 278.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dept.

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying correspondence*, which has passed between the two Sudder courts, regarding a difference of opinion as to the power of a zillah judge to punish litigious appeals under the provisions of the last Section of Regulation XIII. of 1796.

I have, &c.

Fort William,
18 February 1840.

(signed) *F. J. Halliday*,
Secy to the Government of Bengal.

P. S.—Please to return the enclosures.

(No. 345.)

Legis. Cons.
5 April 1841.
No. 2.
Enclosure.

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Sudder Dewanny Adawlut.
Present:
R. H. Rattray, C. Tucker, and E. Lee Warner, Esqrs. judges; and A. Dick and J. F. M. Reid, Esqrs. temporary judges.

I AM directed to request that you will submit, for the consideration and opinion of his Honor the Deputy Governor, the accompanying copy of correspondence as per margin†, which has passed between this and the Western Court of Sudder Dewanny Adawlut, involving a difference of opinion between the two courts, on the subject of the power of a zillah judge to punish litigious appeals under the provisions of the last section of Regulation XIII. 1796.

2. The court have not thought it necessary to forward to the Western Court the draft of a circular, as suggested in the 3d para. of their register's letter, 2103, of the 16th ultimo, as the two courts are entirely at variance in regard to the point in issue; the Calcutta court considering that the zillah judges have the power of punishing litigious appeals, and the Western Court maintaining a contrary opinion.

I am, &c.

Fort William, 24 January 1840.

(signed) *J. Hawkins*,
Register.

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* Letter from Register Sudder Dewanny Adawlut, dated 24 January 1840, No. 345.

†From Judge of Hooghly - - - - - - - - No. 71, 20 April.
To Register Sudder Dewanny Adawlut, Western Provinces, No. 1162, 10 May.
From - - - - Ditto - - - - - - - Ditto - No. 920, 31 May.
To - - - - Ditto - - - - - - - Ditto - No. 1743, 5 July.
From - - - - Ditto - - - - - - - Ditto - No. 1306, 26 July.
To - - - - Ditto - - - - - - - Ditto - No. 2312, 16 August.
From - - - - Ditto - - - - - - - Ditto - No. 1678, 20 September.
To - - - - Ditto - - - - - - - Ditto - No. 3159, 15 November.
From - - - - Ditto - - - - - - - Ditto - No. 2103, 16 December.

(No. 71.)

From *R. Barlow*, Esq., Judge of Zillah Hooghly, to the Register to the Sudder Dewanny Adawlut, Fort William.

Sir,

I SHALL be obliged by your ascertaining whether the provisions of Sect. 3, Regulation XIII., of 1796, are applicable to the courts of zillah judges, as now constituted; and if not, whether it be not expedient to empower judges to fine parties preferring litigious appeals, as was done by the provincial courts before their abolition.

I have, &c.

Zillah Hooghly Dewanny Adawlut, 20 April 1839. (signed) *R. Barlow*, Judge.

(No. 1162.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to the Register of the Sudder Dewanny Adawlut, Western Provinces.

Sir,

I AM directed by the Court to request that you will lay before the Judges of the Court of Sudder Dewanny Adawlut for the Western Provinces, the accompanying copy of a letter from the Judge of Zillah Hooghly, No. 71, dated the 20th ultimo.

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, and C. Tucker, Esqrs. judges; and J. F. M. Reid, Esq. temporary judge.

2. The Court propose to inform the Judge of Hooghly, with the concurrence of the Agra Court, that as the powers exercised by the late provincial courts of appeal are now vested in the zillah judges, it is competent to those officers to fine parties preferring litigious appeals, as provided for by Sect. 3, Regulation XIII. 1796.

I am, &c.

Fort William, 10 May 1839. (signed) *J. Hawkins*, Register.

(No. 920.)

From *M. Smith*, Esq. Officiating Register Sudder Dewanny Adawlut, N. W. P. to *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

WITH reference to your letter, No. 1162, dated 10th instant, I am directed to say, that before giving an opinion upon the subject to which it relates, the court request they be informed whether, in para. 2d of that communication, allusion is made by your court to any particular law under which the powers exercised by the late provincial courts of appeal are vested in the civil judges.

Sudder Dewanny Adawlut, N. W. Provinces. Present: W. Lambert, W. Monckton, and B. Tayler, Esqrs. judges.

I have, &c.

Allahabad, 31 May 1839. (signed) *M. Smith*, Offg Register.

(No. 1743.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to the Register Sudder Dewanny Adawlut, N. W. P.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 920, dated 31st May last, and in reply to state, that in expressing their opinion that the powers exercised by the late provincial courts of appeal are now vested in the civil judges, they did not allude to any particular law on the subject; but they consider that the judges possess that power under the general extension of their jurisdiction consequent upon the abolition of the provincial courts; as for instance, the appellate authority conferred upon them by the provisions of Clause 2, Sect. 28, Regulation V. 1831; with reference to which the court desire me to observe, that as that enactment conferred the appellate jurisdiction

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, and C. Tucker, Esqrs. judges; A. Dick, and J. F. M. Reid, Esqrs. temporary judges.

(C.) No. V.
Special Appeals.

diction on the zillah and city courts, it of necessity conferred on them all the powers before given to the provincial courts as courts of appeal, and consequently the powers vested in them by Sect. 3, Reg. XIII. 1796, especially as appellate courts.

2. Should, however, the Western Court be of opinion that an express enactment on the subject is desirable, the court will bring the matter to the notice of Government with that view.

I am, &c.

Fort William, 5 July 1839. (signed) *J. Hawkins*,
Register.

(No. 1306.)

From *M. Smith*, Esq., Officiating Register to the Sudder Dewanny Adawlut, N. W. P., to *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

Sudder Dewanny Adawlut, N. W. Provinces. Present: W. Lambert, W. Monckton, and B. Tayler, Esqrs. judges.

I AM directed to acknowledge the receipt of your letter, No. 1743, dated 5th instant, the subject of which the court have taken into consideration, and now instruct me to signify their opinion as follows:

2. Adverting to the fact of Clause 2, Sect. 28, Regulation V. of 1831, quoted in your communication, appearing to this court only to provide for appeals being received by the zillah or city judge from original decisions passed by the principal sudder ameen, in the same manner as similar appeals were previously received from decisions of the sudder ameen and moonsiff, as well as to the circumstance of Regulation II. of 1833 expressly prescribing the transfer of original suits pending before the provincial courts, and all matters connected with the primary jurisdiction exercised by such courts, to the zillah and city courts, and of all appeals and business appertaining to its appellate jurisdiction to the Sudder Dewanny Adawlut, I am desired to say that the court cannot concur in the view that the power of fining litigious appellants, conferred on the provincial courts by Sect. 3, Regulation XIII. 1796, became, by the operation of the new system consequent on the abolition of those tribunals, vested in the zillah and city courts.

3. With regard to your second paragraph, in which the possible expediency of a new enactment conferring such power is alluded to, I am instructed to remark, that the court are unable to recognise the expediency of such an enactment, or of the conferment of such power. They observe, that the constitution and circumstances of the two tribunals, and the rules for regulating their proceedings, are widely dissimilar. The decisions appealed to the provincial courts were passed by high European judicial officers, and the appellate court had not the power of confirming the decree without summoning the respondent, which it now possesses, and which, as it enables the court to dispose of the appeal without any delay, removes one chief ground for the necessity of the rule laid down in Sect. 3, Regulation XIII. 1796.

4. Accordingly, in the provincial courts great delay often occurred before the suit came to a decision, which was often confirmatory of the decree of the inferior court; and under such circumstances, the payment of the institution fee alone not being considered a sufficient imposition to discourage litigious and frivolous appeals, the necessity arose of the court being empowered to impose a fine for that purpose.

5. The court are disposed to think that the investment of the zillah courts with the same power might have the injurious consequence of deterring persons having real grounds of complaint from preferring appeals from decisions of the native judges.

I have, &c.

(signed) *M. Smith*,
Officiating Register.

Allahabad, 26 July 1839.

(C.) No. V.
Special Appeals.

(No. 2312.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to *M. Smith*, Esq. Register of the Sudder Dewanny Adawlut, North West Provinces, Allahabad.

Sir,

Sudder Dewanny Adawlut.
Present:
R. H. Rattray, W. Braddon, and C. Tucker, Esqrs. judges; and A. Dick, and J. F. M. Reid, Esqrs. temporary judges.

I AM directed by the court to acknowledge the receipt of your letter, No. 1306, dated 26th ultimo, conveying the opinion of the judges of the western court, that the zillah judges are not competent to punish litigious appeals by a fine, under the provisions of Sect. 3, Regulation XIII. 1796, corresponding with Sect. 35, Regulation IV. of 1803, for the Western Provinces.

2. In reply, I am desired to observe that the court will be prepared to give every consideration to the argument of the western court, in regard to the inexpediency of vesting the zillah judges with the authority possessed by the late provincial courts for the punishment of litigious and vexatious appeals, when the question of the actually existing law on the subject shall have been finally disposed of, and which, it appears to the court, admits of further consideration.

3. It is true, the court observe, that the letter of the enactment above cited is applicable only to the late provincial courts; but in recording the opinion contained in my letter, No. 1162, of the 10th May last, they were under the impression that the spirit of the rule had been extended to the courts of the zillah judges. I am now directed to request that you will draw the attention of the western court to the circular order, No. 155, dated 2d October 1835, and to the opinion expressed in Mr. Officiating Register Harington's letter, No. 56, dated 7th August of the same year, on which it was founded. The terms of the circular appear to the court calculated to mislead the district judges, if it be now maintained that they do not in this respect (viz. of preventing litigious appeals) occupy the position of the late provincial courts.

4. Had the circular been limited in its application to the courts mentioned in Mr. Harington's letter of the 7th August 1835, and to which the western court originally intended to limit it, the court would have had no doubt as to the power declared thereby to be vested in the zillah judges, for it appears to them impracticable to extend one clause or sentence of a section to a particular court, and withhold from that court the power conferred by another part of the same section, the object of the entire section being one and the same. On the suggestion, however, of this court, made, as they now think, without sufficient advertence to the extent of the power exercised by the late provincial courts under the law cited, a second paragraph was added to the circular, declaring the spirit of the rule applicable to the courts of the principal sudder ameens, upon whom it never could have been intended to confer the power of fining under the circumstances contemplated.

5. I am desired to request that you will again lay the subject before the judges of the western court for their consideration and opinion, with reference to the foregoing observations. Should it be finally resolved to adhere to the present opinion of the western court, it will be necessary to issue a circular superseding the circular No. 155, and modifying No. 171 of the same volume. To the first paragraph of the circular No. 155, this court, however, are inclined to adhere, and with reference to the objection to the partial application of a law already adverted to, to rule that the provisions of Sect. 3, Regulation XIII. 1796, are generally applicable to the courts of the zillah judges; and to declare that in the courts of the principal sudder ameens, interest must be awarded upon the general principle of interest being leviable upon unpaid debts justly due.

I have, &c.

(signed) *J. Hawkins*,
Register.

Fort William, 16 August 1839.

(C.) No. V.
Special Appeals.

(No. 1678.)

From *M. Smith*, Esq. Officiating Register Sudder Dewanny Adawlut, North West Provinces, to *W. Tayler*, Esq. Officiating Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

Sudder Dewanny Adawlut, N. W. Provinces. Present: W. Lambert, W. Monckton, and B. Tayler, Esqrs. judges.

I AM directed to acknowledge the receipt of Mr. Hawkins' letter, No. 2312, dated 16th ultimo, conveying the further observations of the Presidency Court on the presumed power of zillah judges, by the constructive application to their courts of the rule conferring that power on the provincial courts of appeal, to punish litigious appeals.

2. The Calcutta court now advert to a circular issued with the concurrence of the two courts, No. 155, dated 2d October 1835, and to this court's letter of the 7th August of the same year, whereon it was founded, extending to zillah judges the obligation imposed by Sect. 35, Regulation IV. of 1803, on the provincial courts, of adjudging interest on the sum decreed, at one per cent. per mensem, whenever they might confirm the decree of the lower court.

3. The Presidency Court argue that the terms of that circular, which, in prescribing the extension alluded to, advert to the object of the rule so extended as being the prevention of litigious appeals, and to the situation which the zillah courts are now placed by the abolition of the provincial courts, establish their view of the zillah courts, in the particular of preventing litigious appeals, occupying the position of the late provincial courts, and they hold that under a different interpretation the circular in question is calculated to mislead the district judges.

4. It is particularly urged by your court, the power of adjudging interest on decrees confirmed on appeal, and of imposing a fine in the case of litigious appeals, being both conferred by the section before quoted, that the extension of one portion of the rule necessarily includes the extension of the other, the object of the entire section being one and the same.

5. This court have adverted to the circular and letter in which it originated, and though, from the allusion to the "prevention of litigious appeals," they might possibly be considered to bear the construction which the Calcutta court suppose, this court are persuaded that such was not contemplated at the time of their being written.

6. It certainly was not intended to imply that the abolition of the provincial courts had placed the district tribunals exactly in their position, but only that it altered the constitution and character of the latter courts, and elevated them in the judicial scale by the removal of the intermediate grade between them and the tribunal of last resort.

7. With regard to the position of the Calcutta court (as stated in my fourth paragraph), that the object of the entire section is one and the same, this court cannot admit its correctness. It appears to them to comprehend two distinct objects, and is partly injunctive and partly permissive. It enjoins the award of interest on decrees confirmed on appeal, and is so far a mere act of justice to the respondent, to protect him from loss resulting from the delay; it permits the imposition of a penalty at discretion, in cases when the appeal may seem to be vexatious and preferred without cause, and is so far a means of particular retribution in the hands of the court as regards the litigious appellant, and of general check in respect to all suitors.

8. With reference to the foregoing view, the court concur with the Presidency Court in considering some modification of the terms of the circulars, No. 155 and No. 171, necessary.

I have, &c.

(signed) *M. Smith*,
Officiating Register.

Allahabad, 20 September 1839.

(C.) No. V.
Special Appeals.

(No. 3159.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to the Register of the Sudder Dewanny Adawlut, North West Provinces, Allahabad.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 1678, dated the 20th September last, communicating the further sentiments of the western court in regard to the constructive application to the zillah courts of the rule contained in Sect. 3, Regulation XIII. 1796, conferring on the late provincial courts of appeal the power of punishing litigious appeals.

Sudder Dewanny Adawlut.
Present:
R. H. Rattray,
W. Braddon,
C. Tucker, and
E. Lee Warner,
Esqrs. judges; and
A. Dick, and
J. F. M. Reid,
Esqrs. temporary judges.

2. In reply to the observations contained in the 7th paragraph of your letter, I am directed to state that the court entirely concur with your court that the rule alluded to is partly injunctive and partly permissive; but this argument does not appear to the court to meet their position, that if one part of the section is applicable to the zillah courts the other part must be equally so; with this difference in practice, that while the injunction is imperative, the permission is to be exercised at discretion.

3. As the opinion of the court then remains unaltered, they direct me to repeat their proposition of issuing a circular to the effect stated in the concluding paragraph of my letter, No. 2312, of the 16th August last. Should the western court still object to such a modification of the existing orders, the court would propose to submit the question to government for decision, with reference to the proper construction of Sect. 3, Regulation XIII. 1796.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William, 15 November 1839.

(No. 2103.)

From *M. Smith*, Esq. Officiating Register Sudder Dewanny Adawlut, North West Provinces, to *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

I AM directed to acknowledge your letter, No. 3159, dated 15th ult. in reply to the further observations recorded by this court under date 20th September last, on the subject of the presumed power of zillah judges, by a constructive application to them of the rule conferring that power on the provincial courts of appeal, to punish litigious appeals.

Sudder Dewanny Adawlut,
N. W. Provinces.
Present:
W. Monckton, and
B. Tayler, Esqrs. judges.

2. Your court now revert to paragraph 5 of their communication of the 16th August last, in which it is said, that "should it be finally resolved to adhere to the present opinion of the western court, it will be necessary to issue a circular superseding the circular No. 155, and modifying No. 171 of the same volume;" but that to the first part of the former circular, your court "were inclined to adhere, and to rule that the provisions of Sect. 3, Regulation XIII. 1796, are generally applicable to the courts of the zillah judges; and to declare that in the courts of the principal sudder ameens, interest must be awarded upon the general principle of interest being leviable upon unpaid debts justly due." The proposition of a circular in the above terms is now repeated by the Calcutta court.

3. This court do not hence gather with certainty to what extent the two courts agree in withholding from the zillah judges the power of punishing litigious appeals; but assuming that your court concur with them in the propriety of that course, they would wish, before definitively recording their acquiescence in the circular, in order to obviate possible misconception, to be put in possession of the draft of the circular proposed by your court, with which they will be glad to be favoured, in order that they may have the opportunity of suggesting the alteration of any point on which doubt might still exist.

I have, &c.
(signed) *M. Smith*,
Officiating Register.

Allahabad, 16 December 1839.

(True copies.)
(signed) *J. Hawkins*, Register.

(C.) No. V.
Special Appeals.

Legis. Cons.
5 April 1841.
No. 3.
Judicial Dept.

(No. 119.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Sir,

I AM directed by the Right honourable the Governor to request that you will submit for the consideration and orders of the Supreme Government the accompanying letter from the register of the Sudder Court, observing upon the subject of Mr. Halliday's letter, No. 441, of the 19th October last.

No. 191, 8th inst.

I have, &c.

(signed) *F. J. Halliday*,
Sec. to the Government of Bengal.

Fort William, 26 January 1841.

P. S.—Please to return the enclosure.

Legis. Cons.
5 April 1841.
No. 4.
Enclosure.
Sudder Dewanny Adawlut.
Present:
R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. judges; and J. F. M. Reid, Esq. temporary judge.

(No. 191.)

From *J. Hawkins*, Esq., Register Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, in the Judicial Department.

Sir,

I AM directed by the court to acknowledge the receipt of your deputy's letter, No. 1727, of the 10th November last, with its enclosed letter from the junior secretary to the Government of India, on the subject of constructions of law.

ABSTRACT: The views of the Supreme Government regarding constructions of law differ in certain points from those of the two courts.

2. The court observe, that although the Supreme Government have approved of certain views of the two Sudder Courts, expressed in the course of this correspondence, there are a few points on which a difference of opinion exists, and on these the court beg leave to submit the following remarks.

The plan suggested by Government, of opening the sudder courts to all special appeals liable to serious objection, from the large number of such appeals which would be preferred.

3. Instead of the present mode of construing doubtful points of law, the Supreme Government suggest the enactment of a law by which special appeals shall be preferred exclusively to the sudder courts. The court have given due consideration to the argument by which this plan is supported; but it appears to them that a practical and weighty objection to it, to be found in the large number of special appeals which would flow into this court in consequence, has been overlooked. The statements of 1839 show that during that period 1,238 petitions for the admission of special appeals were disposed of by the zillah judges, and that 1,058 petitions of the same description were pending on their files on the 1st January 1840. This is a mass of business which, with all the precaution which may be taken to prevent the admission of special appeals on insufficient grounds, cannot but embarrass the files of the sudder courts, even though the number of judges attached to each were to be considerably augmented.

The object of the Government would be attained by permitting the zillah courts to certify cases involving points of law not before judicially decided.

4. To avoid the inconvenience which would arise from an influx of special appeals, and at the same time to obtain a formal decision on points of law not before judicially decided by the superior court, it was suggested in para. 8th of my letter, No. 2683, of the 31st July last, that the zillah judges should be empowered to certify to this court the propriety of admitting an appeal in cases involving points of law not theretofore decided. The opinion of the court regarding the expediency of an enactment which shall empower them to hear and decide particular cases, has undergone no alteration.

But constructions of law by both courts would still be necessary in some cases.

5. The adoption of the suggestion would of course obviate the necessity of giving constructions of law on points which may come judicially before the lower courts; still the court believe there may be points on which the lower courts may require instruction for other purposes than that of being guided by them in the decision of suits pending before them; and with reference to the expediency

(C.) No. V.
Special Appeals.

expediency of uniform constructions of law in both presidencies, the court are of opinion that the two courts should be allowed to consult each other in such cases, as has been done heretofore.

6. The original enclosure of the letter under reply is herewith returned.

I have, &c.

(signed) *J. Hawkins*,
Registrar.

Fort William, 8 January 1841.

MINUTE by the Honourable *A. Amos*, Esq.

Legis. Cons.
5 April 1841.
No. 5.
Special appeals; circular orders; differences of sudder courts.

OUR discussions began with the consideration of two points, 1st, as to the course to be adopted when the sudder courts differ in opinion, and, 2dly, as to circular orders, especially when founded on hypothetical cases, and involving unargued and extrajudicial constructions of law.

As to the first point, I think it seemed to be the general opinion, that the courts would very properly consult each other in cases of difficulty, but that government ought not to interfere, and that no arrangement as to taking the voices of the judges of both courts was practicable according to their present constitution. I think, however, that a provision for determining differences between the sudder courts may, perhaps, be introduced into the Act under consideration of the Law Commission for establishing what they term a College of Justice.

With regard to circular orders, the consideration of this subject led to our noticing a defect of greater moment in the administration of Indian justice, and of which circular orders were, in some measure, a palliative; viz. the number of cases in which questions of law were finally determinable by zillah judges. The same inquiry brought to our notice a number of instances in which the time of the sudder courts was unnecessarily occupied with inquiries into matters of fact, where their inquiries might be much more conveniently limited to questions of law.

Some legislation appears desirable in order to obviate the necessity, or supposed necessity, for circular orders upon constructions of law, and to remedy the multiform and discordant decisions by zillah judges upon the same points of law, which decisions are, at present, not open to appeal; at the same time taking particular care that the sudder courts are not overcharged with new business.

The accompanying draft, furnished by Mr. Halliday, appears to accomplish the ends we have in view. Should it so appear to those members of council who are better judges than myself upon these subjects of mofussil procedure, I would propose that the draft be published, provided it appear, by a demi-official communication of our secretary, that the sudder court of the presidency are not opposed to the principles of the Act. Should they be opposed (which is not anticipated), their objections might be called for more formally before publication; after publication, it may be sent to both sudder courts, and to the Law Commission, for modification or extension.

20 March 1841. (signed) *A. Amos.*

Fort William, Legislative Department, the 5th April 1841.

Legis. Cons.
5 April 1841.
No. 6.

DRAFT OF ACT.

An Act for amending the Rules of Special Appeals.

1. IT is hereby enacted, that Clauses 1, 2, and 4, Section 2, Regulation XXVI. 1814; Section 7, Regulation XIX. 1817; Sections 2, 3, 4, 5, and 6, Regulation IX. 1819; Clause 1, Section 28, Regulation V. 1831; Section 6, Act XXV. of 1837, of the Bengal Code, be repealed.

2. And it is hereby enacted, that from and after the day of 1841, a second or special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, from all decisions passed in regular appeals in any civil court in the manner hereinafter specified.

(C.) No. V.
Special Appeals.

3. And it is hereby enacted, that except in cases in which the petition relates to a decision passed in regular appeal by a zillah or city judge, every application for the admission of a special or second appeal shall be presented within the period limited for the admission of a regular appeal to the judge of the zillah or city within which the regular appeal has been decided; and every application for the admission of a special or second appeal against the decision passed in regular appeal by a zillah or city judge, shall, in like manner, be presented to a single judge of the Court of Sudder Dewanny Adawlut.

4. And it is hereby enacted, that no special or second appeal shall be admitted in any case, unless the judgment appealed against be upon some question of law merely as raised upon a statement of facts which shall not be liable to be controverted: Provided always, that the judge shall not certify any case unless where he is of opinion that the decision is contrary to law, or that it depends upon points of law upon which there exist reasonable doubts.

5. And it is hereby enacted, that the judge to whom such application for the admission of a second or special appeal may be presented, shall call before him the special appellant, or his vakeel or agent, and shall, at his discretion, call for and peruse any document forming part of the record of the cause which he may deem proper, and shall, by such other inquiries as he may consider necessary, determine the point or points on which the appeal is liable, under this Act, to be specially tried by the Courts of Sudder Dewanny Adawlut, and shall reduce the said point or points to writing, in the form of a certificate, and shall transmit the same in the vernacular language, together with an English translation thereof, attested by his official seal and signature, with the original petition for the admission of the second or special appeal, and copies of the decrees passed in the case to the register of the Courts of Sudder Dewanny Adawlut, to be tried by those courts in due course; and it shall be lawful for the judge to reject any such petition at his discretion, and his order so rejecting a petition for a special or second appeal shall be final and conclusive.

6. And it is hereby enacted, that the Courts of Sudder Dewanny Adawlut shall in every such case so transmitted to them, try and determine the point or points certified as above enacted, and no other point or part of the case whatever.

7. And it is hereby enacted, that it shall be competent to the Courts of Sudder Dewanny Adawlut, in any case in which the special ground of appeal may appear to have been incorrectly or incompletely certified by a zillah or city judge, to return the certificate for amendment, or, in cases in which it may appear to have been improperly transmitted, to annul the certificate altogether, without requiring the attendance of the special appellant, or his vakeel or agent.

8. And be it enacted, that nothing contained in this Act shall be construed to interfere with the authority vested in a single judge of the Court of Sudder Dewanny Adawlut, or in a zillah or city judge, under the provisions of Regulation IX. 1831 and Act VII. of 1838, of issuing any injunction to the lower courts, for the revision of any case on the grounds and in the manner laid down by that Regulation and Act.

9. And be it enacted, that nothing contained in this Act shall affect the trial of second or special appeals which shall have been admitted and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be tried and decided in the same manner as if this Act had not passed.

(No. 42.)

Legis. Cons.
5 April 1841.
No. 7.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative Dept.

I AM directed by the Right honourable the Governor-general in Council to acknowledge the receipt of your letter, No. 119, of the 26th January last, with its enclosure, on the subject of the construction of law, and in reply to forward to you the accompanying draft of Act providing for the objects in view, which you

(C.) No. V.
Special Appeals.

you are requested to transmit, with the permission of the Governor of Bengal, to the Sudder Court at the presidency, for their opinion on its provisions.

2d. The original paper which accompanied your letter is herewith returned.

I have, &c.
(signed) *T. H. Maddock*,
Secy to the Govt of India.

Council Chamber,
5 April 1841.

(Duplicate, No. 1396.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Judicial Department.

Legis. Cons. 19 July 1839/41. No. 42.

Sir,

Judicial Dept.

I AM directed by the honourable the Deputy Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the Register of the Nizamut Adawlut (No. 2086 of the 2d inst.), submitting draft of an Act to empower that court to receive appeals from the decisions of sessions judges, when such decisions are not in conformity to law, as required by your letter, No. 251, of the 10th June last.

I have, &c.
(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

Fort William,
22 August 1839.

P. S. Be good enough to return the enclosures.

(Duplicate, No. 2086.)

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Nizamut Adawlut. R. H. Rattray, W. Braddon, and C. Tucker, Esqrs. judges; A. Dick, and J. F. M. Reid, Esqrs. temporary judges.

I AM directed to acknowledge the receipt of your letter, No. 1119, dated 27th June last, and in reply to transmit, for submission to his Honor the Deputy Governor, the accompanying draft of an Act to empower the Nizamut Adawlut to receive appeals from the decisions of the sessions judges, when such decisions are not in conformity to law.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William,
2 August 1839.

DRAFT OF AN ACT.

1. IT is hereby enacted, that Sect. 3, Regulation IX. 1831, and such parts of Sect. 4, Act XXIV. 1837, as relate to the decisions of the sessions courts in judicial proceedings other than criminal trials, be rescinded.

2. And it is hereby enacted, that it shall be competent to the court of Nizamut Adawlut to receive an appeal from the decision of a sessions judge in any judicial proceeding other than a criminal trial, when such decision may be evidently illegal, and to issue an injunction to the sessions judge to proceed in conformity to law; provided that it shall not be competent to the Nizamut Adawlut to entertain any appeal or pass any order on the merits of such proceeding.

(True copy.)
(signed) *J. Hawkins*, Register.

(True copies.)
(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

(C.) No. V.
Special Appeals.

(No. 858.)

Legis. Cons. 19 July 1841. No. 43.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dept.

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the register of the court of Sudder Dewanny Adawlut, submitting the Court's opinion on the provisions of the proposed Act for amending the law of special appeals, which accompanied your letter of the 5th April.

No. 1704, of the 14th inst.

I have, &c.
(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

Fort William, 27 May 1841.

P. S. Please to return the enclosure.

(No. 1704.)

Legis. Cons. 19 July 1841. No. 44.

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, Esqrs. judges; and J. F. M. Reid, Esq. temporary judge.

IN compliance with the requisition conveyed in the resolution of the Right honourable the Governor, No. 631, of the 20th ultimo, I am directed to report the opinion of the court on the provisions of the proposed Act for amending the law of special appeals.

2. To prevent doubts which may arise on the point, the court suggest that section 4 be altered so as to stand as follows: "And it is hereby enacted, that no special or second appeal shall be admitted in any case, unless the judgment appealed against be inconsistent with some established judicial precedent, or involve some question of law, usage, or practice, as raised upon a statement of facts which shall not be liable to be controverted. Provided always, that the judge shall not certify any case unless where he is of opinion that the decision is contrary to an established judicial precedent, or contrary to law, usage, or practice, or that it depends upon points of law, usage, or practice, upon which there exists reasonable doubts."

3. They would further suggest, that in para. 6th the third line be altered as follows: "Every case transmitted to or admitted by them, try," &c., and that in the third and fifth paras. the expression "presented" to a single judge, &c., be altered to "heard by a single judge."

4. The original papers connected with this reference are herewith returned, copies being retained for record.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William, 14 May 1841.

(No. 887.)

Legis. Cons. 19 July 1841. No. 45.

From *J. Thomason*, Esq. Secretary to the Government, North Western Provinces, to *T. H. Maddock*, Esq. Secretary, Government of India, Legislative Department.

Sir,

Judicial Dept.

WITH advertence to the latter part of paragraph 4 of your letter, dated 30th March 1840 (a copy of which was furnished to this office), to the address of the Secretary to the Government of Bengal, concerning differences of opinion upon constructions of law and practice, existing between the lower and western courts, I am directed by the Honourable the Lieutenant-governor to transmit, for submission to his Lordship in Council, the accompanying copy of a letter from the Register Sudder Dewanny Adawlut, North Western Provinces, dated 10th

10th April, with such portions of the correspondence referred to therein as are considered necessary to a right understanding of the subject.

2. His Honor concurs in opinion with the presidency court, regarding the admissibility of special appeals by the Sudder Dewanny Adawlut, from the decisions of principal sudder ameens, in cases cognizable by sudder ameens.

I have, &c.
(signed) *J. Thomason.*
Agra, 13 May 1841. Secretary to the Government, N. W. P.

Abstract.

With reference to his letter dated 30th March 1840, to the address of the Government of Bengal, transmitting copy of another from the Sudder Dewanny Adawlut, North Western Provinces, with correspondence between the lower and western courts; and concurring in opinion with the former, regarding the admissibility of special appeals by the Sudder Dewanny Adawlut, from the decisions of principal sudder ameens, &c.

(No. 656.)

From *M. Smith*, Esq. Register to the Court of Sudder Dewanny Adawlut, North Western Provinces, to *J. Thomason*, Esq. Secretary to the Honourable the Lieutenant-governor, in the Judicial Department, North Western Provinces, Agra.

Legis. Cons. 19 July 1841. No. 46. Enclosure.

Sir,

Sudder Dewanny Adawlut, N. W. Provinces. Present: B. Tayler, G. P. Thompson, and F. Currie, Esqrs. judges; and H. H. Thomas, Esq. officiating judge.

UNDER a contingency which appears to make such a course expedient according to the lately expressed opinion of the Government of India, in the legislative department, contained in the extract cited in the margin*, I am directed to request the submission of the accompanying copies of papers according to list appended, to the honourable the Lieutenant-governor, on the subject of a construction of Sect. 5, 6, and 7, Act No. XXV. 1837, resolved upon by the judges of the Sudder Dewanny Adawlut, at the presidency, (who have proceeded to act upon it), in which the judges of this court cannot concur.

2. The point which has been under discussion, and in respect to which the two courts are divided, is fully set forth in the papers sent, and as the correspondence alluded to in paragraph 3 of my letter to the register of Calcutta court, dated 22d September last, No. 1876, and enumerated at the end of that communication, is in the records of the government of the north-west provinces, its transmission is not needed.

3. Mr. Lambert, whose opinion was originally given with those of his colleagues, having since quitted the court, the papers were laid before Mr. Thompson, on his joining the court, and his sentiments are in unison with those expressed by the other judges, as will be seen by the transcript, which accompanies, of the note recorded by him on the occasion.

4. It will be noticed by his Honor, that although the presidency court admitted the ambiguous character of the provisions contained in the sections already indicated†, and addressed Government for any light regarding the supposed

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* Extract part of para. 9, of letter from Junior Secretary to Government of India, to address of Government of Bengal, of 19 October 1840:

"It might happen, under this plan, that the decisions of one bench on a particular point of law would differ occasionally from those of another; but this, with the interested vigilance of advocates, the deference to the authority of another superior court, which has previously decided the same point, and which authority ought to be entitled to great weight in all judicial discussions, and the printed report of decisions always before the court, could very seldom take place. When it did happen, it would be brought by either court to the notice of its own government, and thence to that of the Legislative Council, for a new or declaratory law, if such were thought to be needed."

N. B.—For the information of Government, copy of the entire communication from the Calcutta court, in which this extract is contained, is submitted. It concerns the subject of your letter, No. 1358, dated 23 April, and my answer, No. 1033, of 22 May 1840, and of the other correspondence noted in Italics, as submitted in margin of para. 5, of this letter, on which the court will have to make a separate address.

† Para. 2, of Mr. Hawkins' letter, No. 2981, of 14 August 1840.

(C.) No. V.
Special Appeals.

posed mistake, which the recorded deliberations that took place prior to the passing of the Act might throw on the subject, yet they did not await a reply, and have not alluded to the point in their last communication of February 5th, intimating the resolution to which they have come in the matter.

5. It must further be remarked, in explanation of this address, notwithstanding both courts having recorded opinions against the mode heretofore in use of referring controverted points for the determination of government, as laid down by paragraph 2 of the Judicial Resolution of 6th December 1831, and having resolved that the whole proposed by the presidency* court be acted on, and such questions decided by a majority of voices of the judges of the two courts, that the present occasion is not such as falls under that rule, the four permanent judges of each court being opposed, and this court having argued that a recourse to the opinion of a temporary judge of either court, for the purpose of settling the difference, is not sound in principle or advisable.

6. The court, therefore, being still entirely averse to the adoption of the rule introduced by the presidency court, avail themselves of the recommendation made in the extract cited in my first paragraph, to submit the matter to the government of the provinces, with a view to the enactment of a declaratory law.

I have, &c.

(signed) *M. Smith*,
Register.

Allahabad, 10 April 1841.

Abstract.

With reference to a construction of part of Act XXV. 1837, regarding which opinions of judges of two courts are equally divided, submits copies of papers, from which the question desired to be referred will be seen; notices admitted ambiguity of the law regarding it, explains reasons of this reference as illustrated by correspondence sent, and suggests enactment of a declaratory law to clear up the doubt.

Correspondence forwarded herewith, alluded to in paragraph 1.

(Copies.)

Register Calcutta Court, to my address No. 2981, dated 14th August 1840 and annexures.
My reply, No. 1876, dated 22d September, and minutes of four judges.
Register Calcutta Court, No. 3794, dated 23d October.
My reply, No. 2217, dated 20th November.
Register Calcutta Court, No. 486, dated 5th February 1841.

(No. 2981.)

Sudder Dewanny Adawlut.
Present:
R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. judges; and J. F. M. Reid, Esq. temporary judge.

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, to *M. Smith*, Esq. Officiating Register of the Sudder Dewanny Adawlut, in the North Western Provinces.

Sir,

I AM directed to request that you will submit for the opinion of the judges of the western court the following observations regarding the proper construction of Sect. 5, 6, and 7, of Act XXV. 1837, a consideration of which has become necessary, in consequence of the presentation to this court of sundry petitions for the admission of special appeals, in suits within the competency of a sudder ameen to decide, but referred to and decided by a principal sudder ameen.

2. With

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* Paras. 4 and 7 of Mr. Hawkins' letter, No. 1745, dated 29 May 1840, to my address.
Note.—The court take the opportunity of submitting, in continuation of my No. 1033, *of* 22 *May* 1840, *copies of correspondence noted below, viz.:*
Register Calcutta Court, No. 1745, *of* 29 *May, and annexures.*
My answer, No. 1187, *of* 19 *June.*
Register Calcutta Court, No. 1972, *of* 19 *June.*
My reply, No. 1284, *of* 3 *July.*

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Special Appeals.

2. With reference to the ambiguous character of the provisions under consideration, the court addressed a letter to the Government, No. 1138, under date the 18th April last (a copy of which is herewith forwarded,) soliciting any information which the records of government might afford, calculated to throw light upon what appeared to the court to be an important error, in the omission, after Sect. 7, of a provision corresponding with Sect. 6 of the Act.

3. The Government not having as yet replied to this application, while numerous petitions for the admission of special appeals in suits of the kind above mentioned were constantly presented to the court, it became necessary to consider the legal bearing of the question, and to decide upon the admissibility or otherwise of the appeals. Accordingly, on the suggestion of Mr. D. C. Smyth, the court adopted their resolution of the 7th instant (a copy of which is forwarded,) with a view to the determination of the point in a manner the most satisfactory to the court, as well as to the parties desirous of appealing.

4. Agreeably to the resolution thus adopted, the question was argued by some of the principal pleaders of the court (who had previously urged their right to appeal) before Messrs. Tucker, D. C. Smyth and Reid, who were of opinion that, under the existing law, all cases either above or below 300 rupees, not within the competency of a munsiff, but within the competency of a sudder ameen to decide, and referred for trial to, and decided by a principal sudder ameen, are appealable specially to the Sudder Dewanny Adawlut. In this opinion Messrs. Rattray and Lee Warner have expressed their concurrence.

5. It was urged on behalf of the appellants, that agreeably to Clause 2, Sect. 28, Regulation V. 1831, parties possessed a right of special appeal to the Sudder Dewanny Adawlut under the provisions of the regulations applicable to such cases, from all decisions passed originally by a principal sudder ameen; and although that right had been specifically taken away in cases within the competency of a munsiff, but decided by the principal sudder ameen, by the provisions of Sect. 6, Act XXV. 1837, yet that no special provision had taken away that right in cases within the competency of a sudder ameen, but tried by a principal sudder ameen, and that the omission, after Sect. 7 of the Act, of a provision corresponding with Sect. 6, clearly evinced that it was not the intention of the Legislature to bar such appeals. It was also contended that the words cited in the margin, which occur in Sections 5 and 7, referred to other points, such as the period of appeal, &c. and not to the finality of the judge's decision, which is expressly provided for by Sect. 6, in the case of suits within the competency of a munsiff, but tried by a principal sudder ameen, whereas no such provision is to be found in regard to suits of the nature mentioned in Sect. 7.

"And to the same rules in regard to appeals."

6. The arguments urged on behalf of the appellants, the Court are of opinion are well grounded, and supported by the terms of the provisions under consideration. They hold, therefore, that cases decided under Sect. 7 of the Act, are specially appealable to the Sudder Dewanny Adawlut, under the rules applicable to the admission of special appeals.

7. I am directed to request an early communication of the Western Court's sentiments upon this subject.

I have, &c.
(signed) *J. Hawkins,*
Register.

Fort William, 14 August 1840.

RESOLUTION on a Note by Mr. D. C. Smyth, regarding the Operation of Act XXV. 1837, dated the 7th August 1840.

Read a note by Mr. D. C. Smyth regarding the operation of Act XXV. 1837.

Resolution.

Before passing any orders on the subject discussed in the note, the Court resolve, that the register select one or two cases to be argued in open court by the vakeels of the parties, as to the admissibility of the appeals. The other cases of the same nature can then be disposed of according to that precedent.

(True copies.)
(signed) *J. Hawkins,* Register.

(C.) No V.
Special Appeals.

(No. 1876.)

Sudder Dewanny Adawlut, N. W. Provinces.
Present:
W. Lambert, B. Tayler, and F. Currie, Esqrs. judges; and G. P. Thompson, Esq. officiating udge.

From *M. Smith*, Esq. Officiating Register to the Court of Sudder Dewanny Adawlut, North West Provinces, to *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 2981, dated 14th ultimo, with annexures containing observations as to the proper construction of Sections 5, 6, and 7 of Act No. XXV. 1837, and intimating the opinion of the Calcutta court, formed after hearing the point argued by some of the principal pleaders of that court, that under the existing law all cases either above or below 300 rupees, not within the competency of a munsiff, but within the competency of a sudder ameen to decide, and referred for trial to, and decided by a principal sudder ameen, are appealable specially to the Sudder Dewanny Adawlut.

Mr. Currie.
Mr. Lambert.
Mr. Tayler.
Mr. Thompson.

2. In reply I am instructed to forward for submission to the Presidency Court copies of minutes recorded by the judges of this court, in the order detailed in the margin, from which it will be apparent that while basing their arguments on various grounds, this court are unanimous in opposing the view adopted in the matter under notice by the judges of your court.

3. I am directed to transmit copies of the correspondence cited in the commencement of Mr. Lambert's minute, for the information and consideration of the Calcutta Court, in illustration of the presumable intention of the Government in this matter, and further, to refer you to para. 6 of my predecessor's letter to your address, No. 520, dated 30th March 1839, and para. 2 of your communication thereon, to the Bengal government, bearing date 19th April of the same year, No. 961, expressive of the "entire concurrence" of the Presidency Court in that address.

4. Adverting to the "petitions for the admission of special appeals," mentioned in your first paragraph, out of the presentation of which the present consideration of the question is stated to have arisen, I am instructed to add, that no instance has occurred of similar applications being brought forward in this court since the promulgation of the Act in question.

I have, &c.

(signed) *M. Smith*,
Officiating Register.

Allahabad, 22 September 1840.

Mr. *F. Currie*'s Minute.

I HAVE looked carefully into this subject, and I do not concur with the Calcutta Court. I think the provisions of Section 7, of Act XXV. 1837, which declare that all cases within the competency of a sudder ameen to decide, which shall be tried by a principal sudder ameen, shall be subject to the same rules in regard to appeals as they would have been subjected to if tried by a sudder ameen, do refer to the finality of the decision, as well as to other matters; and I think it is clearly established that such was intended to be the meaning conveyed by the expression by the proviso contained in section 6, following the same phrase in section 5, being thought necessary to mark the process by which this finality should be arrived at, and to declare that an appeal from a principal sudder ameen in the cases alluded to, should not be referable to another officer of the same grade, but should be heard only by the zilla judge. Expunge section 6, and the finality in respect to munsiffs' decisions remains; but then a case tried by a principal sudder ameen, or munsiff, might, with the sanction of the Sudder Dewanny Adawlut, be referred to another principal sudder ameen, if there were one, and a special appeal would lie to the judge; but when in this case of small value, the decision of so high an officer as a principal sudder ameen had been recorded, this process was thought unnecessary; and all that the absence of a corresponding proviso after Section 7 can prove is, that in cases of the greater importance and larger amount, the judge, if he thought fit,

fit, might, with the sanction of the Sudder Dewanny Adawlut, refer the regular appeal to another principal sudder ameen, and thus give, as heretofore, in suits within the competency of a sudder ameen, an opportunity for special appeal, but all determinable in the zilla.

2. The arguments contained in the beginning of paragraph 5 of the Court's letter of 14th ult. seem to be hardly tenable. Clause 2, Sect. 28, Regulation V. of 1831, doubtless left a right of special appeal to the Sudder Dewanny Adawlut in the suits referable to the principal sudder ameen under that law; but that law did not contemplate the trial by the principal sudder ameen of suits cognizable by a sudder ameen, and its provisions cannot be legitimately assumed to be applicable to cases to which it did not, and could not, refer. The scope and tendency of the whole law, set forth in Regulation V. of 1831, is to make the decision of all suits below 1,000 rupees in value, whether admitted to one or two appeals, determinable in the zilla, and this principle is distinctly presumed in Act XXV. of 1837.

3. It is not possible, in my mind, to conceive a reason for making the difference contemplated by the Calcutta Court, viz. that a case of less value than 1,000 rupees being tried by a sudder ameen originally, and by the judge in appeal, shall be final in the zilla; but if tried by a principal sudder ameen originally, and then by the judge in appeal, otherwise; and for supposing that such an arrangement was intended by the Legislature. The principal sudder ameen's judgment is assumed to be better than the sudder ameen's, and is purchased by Government at a much higher rate; it is contrary to reason, and to all the principles of jurisprudence, that this more valuable and better judgment should be thought to require more revision and scrutiny than that which is assumed to be of inferior worth.

4. I consider, therefore, that the letter and spirit of the enactment under consideration, and reason, and principle, are all opposed to the view now taken by the Calcutta Court, and which seems, from the correspondence put up with this letter, and from their own letter to Government of 18th April, to be of recent adoption.

(signed) *F. Currie*,
Judge.

Allahabad, 10 September 1840.

Mr. *Lambert*'s Minute.

REFERRING to the subject and dates of the correspondence noted in the margin, between this court and the government of these provinces (which correspondence does not appear to have been communicated to the Calcutta Court), I think it may be reasonably assumed that sections 5, 6, and 7, were framed with a view to legalize, by a formal enactment, the practice which had been authorized by the government in respect to the trial by a principal sudder ameen of suits within the competency of munsiffs and sudder ameens, and of appeals from decisions passed in such suits by principal sudder ameens; and assuming that the Legislature concurred in the views of the subject which were taken by this court, and adopted by the government, there can be no doubt that no distinction was intended to be made in regard to the finality of the judge's decisions in appeals from decisions of the principal sudder ameens, whether passed in their capacity of sudder ameens or of munsiffs.

From Court, 22 July 1836.
From the Government, 9 Aug. 1836.
From Court, 26 August 1836.
From the Government, 7 Sept. 1836.
From the Government, 22 Mar. 1837.
From Court, 31 March 1837.

2. Under this view of the question, the omission of a provision, after Section 7, corresponding with that in Section 6, appears to be quite immaterial, and in no way sufficient to authorise the admission of special appeals in suits decided by principal sudder ameens, in their capacity of sudder ameens.

3. Respecting the competency of a judge to refer appeals from the decision of a principal sudder ameen, in his capacity of sudder ameen, to another principal sudder ameen, I am not aware of any instance of an officer being authorised to try appeals from the decisions of an officer of the same grade, excepting in the case of a register invested with special powers being authorized to try appeals from decisions passed by another register, in suits of a certain class,

Para. 2, of Calcutta Court's Letter to Government.

Sec. 8, Reg. IX. 1819.

(C.) No. V.
Special Appeals.

class, and then it was provided that the original decision should have been passed by a register junior in the service to the officer competent to try the appeal; and I cannot think that, without a special enactment to that effect, a principal sudder ameen can be intended to try an appeal from a decision passed by another principal sudder ameen in any capacity.

(signed) *W. Lambert,*
Judge.

Allahabad, 17 September 1840.

P. S. I quite concur with Mr. Currie and Mr. Thompson in their remarks respecting the improbability of the intention of the Legislature to allow a special appeal to the sudder court, in a suit originally decided by a principal sudder ameen, in his capacity of sudder ameen, when such appeal would not be admissible under the law in a similar suit, originally decided by a sudder ameen.

(signed) *W. Lambert,* Judge.

Mr. *B. Tayler*'s Minute.

I CONCUR with Mr. Lambert. Government having made the decision of all suits below 1,000 rupees final in appeal before the judge, I cannot suppose that the omission in Section 7 was made for the purpose of allowing a special appeal to the Sudder Dewanny Adawlut in these decisions, which, had the Government provided a complete establishment of sudder ameens, would have been final.

(signed) *B. Tayler.*
Judge.

Allahabad, 18 September 1840.

Mr. *G. P. Thompson*'s Minute.

THERE can be no doubt that the terms used in Sections 5 and 7, being precisely similar, refer to the same thing, viz. (among other rules) to the finality. The addition of the proviso, as contained in Sect. 6, or the omission of such a proviso after Sect. 7, cannot, in my mind, alter the rule with respect to this finality in the face of a direct law countenancing it.

2. Thus much for the letter of the law: as to the spirit of it, I never will believe that the Legislature intended the decision of a principal sudder ameen (in the capacity of sudder ameen) to be open to a special appeal, when, had the same case been tried by a sudder ameen in his own capacity, such an appeal would be barred; or, in short, that the decision of a superior officer (which must be inferred to be better and more valuable than that of the inferior officer) should be subject to a revision to which the decision of the inferior is not.

(signed) *G. P. Thompson.*
Officiating Judge.

Mr. *H. H. Thomas*'s Minute.

THE Calcutta Court found the provisions of Sects. 5, 6, and 7, of Act XXV. 1837, of such an "ambiguous character," that they deemed it expedient to seek for further light among "the records of Government;" and though it does not appear that the search was in any way successful, yet has this ambiguity been so cleared and dispelled by the pleadings of the vakeels, that the court have now settled the question of "finality," by passing a resolution, in which the judges are all of one opinion, that in suits within the competency of a sudder ameen to decide, but referred to and decided by a principal sudder ameen, special appeals are admissible by the Sudder Dewanny Adawlut. On the other hand, the Allahabad Court have recorded their unanimous opinion, that in suits of the description above mentioned special appeals are not admissible by the Sudder

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Sudder Dewanny Adawlut, but that the decision of the zillah or city judge is final. These must be considered two singular instances of harmony and dissent: first, that the judges of each court should jump together in a point of law; secondly, that the two courts respectively should entertain diametrically opposite opinions. After a perusal of the papers connected with the subject, I concur with the judges of this court, whose minutes indeed have left little or nothing for me to subjoin either in the way of argument or illustration. It never was contemplated that the cognizance of suits below 1,000 rupees in amount should extend beyond the zillah or city judge's court, and I do not think that the matter is altered by the fact of suits within the competency of a sudder ameen to decide, being tried by a principal sudder ameen; for it must be considered, that the latter officer tries such suits as a sudder ameen, that the cases so tried are subject to the same rules in regard to stamp paper and to the same rules in regard to appeal as have been provided for suits tried in the first instance by sudder ameens, and that one of those rules is, that "in appeals from the decisions of the moonsiffs, or sudder ameens, the decisions of the zillah or city judge shall be final." I question very much whether the framers of Act XXV. 1837, ever dreamed of a modification of Clause first, Sec. 28, Reg. V. of 1831; on the contrary, I am convinced it was an unintentional omission, that immediately after Sec. 7 of the said Act, a provision similar to the one contained in Sec. 6 was not inserted, regarding suits within the competency of sudder ameens; but now something must be done, for as the constructions of the law by the two courts are widely different, so must be their pratice. No majority can decide the matter, and I see that we have nothing for it but to recommend that a declaratory law be passed, which shall contain the particular information which is at present so much needed, viz. "whether in suits within the competency of a sudder ameen to decide, but referred to and decided by a principal sudder ameen, special appeals are, or are not, admissible by the Sudder Dewanny Adawlut."

(signed) *H. H. Thomas,*
Officiating Judge.

Allahabad, 19 March 1841.

(No. 3794.)

From *J. Hawkins,* Esq., Register to the Court of Sudder Dewanny Adawlut, to *M. Smith,* Esq., Officiating Register of the Sudder Dewanny Adawlut, in the North-western Provinces.

Sir,

I AM directed by the Court to acknowledge the receipt of your letter, No. 1876, of the 22d ultimo, and to state in reply, that they admit the distinction which the Western Court have drawn between suits decided by principal sudder ameens, as such, and those decided by them in the capacity of sudder ameens, supposing them to have been appointed also to the lower grade, as appears to have been done in the Western Provinces, to avoid the contingency of a special appeal being preferred to the Sudder Court in suits below R^{s} 1,000 in amount; but as, in these provinces, principal sudder ameens have never been invested with the powers of sudder ameen, but have nevertheless had suits below R^{s} 1,000 in amount referred to them for trial, the Court are desirous of obtaining the opinion of the Western Court, whether suits decided under these circumstances are, or are not, specially appealable to the Sudder?

Sudder Dewanny Adawlut.
Present:
R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges; and J. F. M. Reid, Esq. temporary Judge.

I have, &c.

(signed) *J. Hawkins,*
Register.

Fort William, 23 October 1840.

(C.) No. V.
Special Appeals.

(No. 2217.)

From *M. Smith*, Esq., Officiating Register, Sudder Dewanny Adawlut, N. W. P., to *J. Hawkins*, Esq., Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sudder Dewanny Adawlut, N. W. Provinces. Present: W. Lambert, B. Tayler, and F. Currie, Esqrs. Judges; and G. P. Thompson, Esq. officiating Judge.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 3794, dated 23d ultimo, in which, while the distinction drawn by this Court between suits decided by principal sudder ameens, as such, and as sudder ameens, is admitted, the further opinion of the Western Court is asked in regard to suits of the latter description being specially appealable or not to the Sudder Dewanny Adawlut, with reference to the fact of the non-investment, in the lower provinces, of principal sudder ameens with the powers of sudder ameen.

Terms of Act XXV. of 1837 do not seem to make special authority for principal sudder ameens trying suits as sudder ameens necessary. The point of difference in the Lower Provinces, noticed by Calcutta Court, induces no change of former opinion in this court.

2. In reply I am desired to say, that it does not appear to the Court, that under the terms of the Act, and adverting to its presumed object, as understood by them, any formal investment of the nature described was necessary, or that a special authority is more needed in the case of suits cognizable by a sudder ameen being tried by a principal sudder ameen, than in that of cases cognizable, ordinarily, by a munsiff being tried by the same officer. The Court are not, therefore, of opinion, that the circumstances of difference noticed constitute any ground for departing from the view which they originally took of the question.

I have, &c.

Allahabad,
20 November 1840.

(signed) *M. Smith*,
Off^{g} Reg^{r}.

(No. 486.)

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, to *M. Smith*, Esq. Officiating Register, Western Court.

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

Sir,

I AM directed to transmit to you, to be laid before the Western Court, copy of a resolution this day recorded by this Court, on the subject of the admission of special appeals, in certain cases decided by principal sudder ameens, under Regulation V. 1831.

I have, &c.

Fort William,
5 February 1841.

(signed) *J. Hawkins*, Register.

RESOLUTION of the Presidency Court of Sudder Dewanny Adawlut, under date the 5th February 1841.

Present:—R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges; and J. F. M. Reid, Esq. Temporary Judge.

Read the following Letters:

Western Court, No. 1876, 22d September last.
Presidency Court, No. 3794, 23d October last.
Western Court, No. 2217, 20th November last.

Read also a minute recorded by Mr. E. Lee Warner, after hearing the arguments of the vakeels, regarding the finality of the decisions of the zillah judges in appeals from the judgments of principal sudder ameens in suits within the competency of the inferior tribunals.

Read

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Read again the Resolution of the 14th August last.

Resolution.—The members of this Court being unanimously of the opinion recorded in the Resolution above mentioned, the Court resolve that that Resolution be now acted upon in this Court; and that the special appeals pending in this Court, which it was determined should lie over, be now taken up and decided in due course.

Ordered.—That a copy of this Resolution be forwarded to the Western Court for their information, and that copies of the same be laid before each Judge of this Court.

(True copy.)

(signed) *J. Hawkins*, Register.

Correspondence alluded to in Italics, in Note in Margin of Paragraph 1, *of my Letter.*

(No. 192.)

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, to *M. Smith*, Esq. Officiating Register to the Sudder Dewany Adawlut, North Western Provinces.

Sudder Dewany Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

Sir,

The Court direct me to transmit to you for the information of the Western Court, the accompanying copy of a letter (No. 1727 of the 10th November last) from the government of Bengal, and of its enclosure, and of the reply made thereto under this day's date.

I have, &c.

Fort William,
8 January 1841.

(signed) *J. Hawkins*, Register.

Correspondence alluded to in Italics, in Note in Margin of Paragraph 5, *of my Letter.*

(No. 1745.)

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, to *M. Smith*, Esq. Register of the Sudder Dewany Adawlut, North Western Provinces.

Sudder Dewany Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

Sir,

I am directed by the Court to transmit for the consideration and opinion of the Judges of the Western Court, the accompanying copy of a letter, No. 668, dated 14th ultimo, from the secretary to the government of Bengal, in the judicial department, and of its enclosure, in regard to the mode of promulgating the constructions of the Courts of Sudder Dewany Adawlut and Nizamut Adawlut, and at the same time to communicate the following observations on the subject.

2. The letter of the secretary to the Supreme Government of the 30th March embraces two important questions.

1st. The way in which differences of opinion between the Calcutta and Allahabad Courts ought to be disposed of, and

2dly. Whether the present system of circulating constructions of regulations made by the Sudder Courts, in consequence of special references to them, by the subordinate authorities, ought to be continued.

3. The Court observe, that the Courts of Sudder Dewany and Nizamut Adawlut are authorised by law, whenever the inferior tribunals construe the law and regulations of Government in a different sense from the construction given them by their immediate superiors, to declare what the real meaning of any part of the regulations may be, and their determination is to be held final and conclusive. Should these Courts have any doubts with respect to the meaning of a regulation, they are directed to report the case to Government, not that the Government may decide the point, but that a new regulation may be framed to explain the doubt; and should any case be referred for the decision

Reg. 10, 1796.

(C.) No. V.
Special Appeals.

sion of the Sudder Dewany and Nizamut Adawlut, in which they may be of opinion that the case is not sufficiently provided for by the Regulations, they are then to propose a new law in the mode prescribed by Regulation XX., 1793.

4. The above rules appear to the Court to provide for every practical difficulty; and all that they now consider necessary, is that the two courts (viz. the Calcutta and Allahabad Courts) should exercise the same powers which were vested in the old Court of Sudder Dewany and Nizamut Adawlut, before the enactment of Regulation VI. 1831; they would therefore propose that the second paragraph of Judicial Resolution of the 6th December 1831 should be rescinded, that the Government should abstain in all cases from any interference with the judicial functions of the courts of law, except in the mode prescribed by Regulation X. 1796, and that in all cases of difference between the Judges of the Presidency and Allahabad Courts, the matter should after due discussion and the exchange of Minutes, be determined by a majority of voices of the two courts, agreeably to the provisions of Section 6, Regulation II. of 1801.

5. With regard to the second point, viz. the promulgation of the Constructions of Regulations issued to the subordinate courts by the Sudder Dewany and Nizamut Adawluts, it appears to the Court that the Supreme Government are not fully aware of the nature of the references made to them, or of the matters contained in their constructions and circular orders. The Court observe, that the duty of the superior courts is simply to give to the subordinate tribunals a fair and honest construction of the Regulations in all cases wherein those tribunals may have doubts, and wherein the meaning may be sufficiently clear to men of ordinary understandings; and a reference to their book of constructions and circular orders will, they think, at once satisfy the Supreme Government, that in the great bulk of the references made by the inferior authorities, such is the course that has been followed by the Courts of Sudder Dewany Adawlut and Nizamut Adawlut.

6. The constructions are in fact almost all simple rules of practice, not rules of law. So long indeed as the present system of removing civil servants from one department of the state to another, obtains, and so long as the Courts of Sudder Dewany and Nizamut Adawlut are considered by the home authorities to be Boards, not only of legal but of moral supervision, such must, they consider, continue to be the duty of the highest superintending authorities; as regards the circular orders, they are almost entirely confined to the duty of prescribing forms for conducting trials and for preparing periodical statements, and calling attention to particular points of the Regulations which have been apparently neglected by the subordinate authorities in cases coming before the Sudder Dewany and Nizamut Adawlut, and which omission it is, in their opinion, the bounden duty of the superior courts to notice.

7. Under the above circumstances the Court would suggest that a reply be submitted, recommending to Government that all points of difference between the two courts be decided by a majority of voices of the judges of the two courts; that the courts abide strictly by the rules of Regulation X. 1796, confining themselves to the duty of explaining to the inferior tribunals the meaning of any law or regulation, in cases wherein it may appear to the Courts of Sudder Dewany and Nizamut Adawlut that the law or regulation is sufficiently clear; giving general instruction to the inferior tribunals regarding the mode of conducting their duties, never taking upon themselves to decide doubtful points of law, which may be mooted in cases pending before the inferior tribunals, and cautiously abstaining from interfering in any way with suits pending before the subordinate courts, except after a regular judicial investigation.

8. With reference to the concluding part of the last paragraph, and in order to meet the cases in which, under the existing law, the decision of the zillah judge is final, the Court would propose to suggest to Government the expediency of rescinding Clause 1, Section 4, Regulation II. 1825, and re-enacting Clause 1, Section 3, Regulation IX. 1819, with a few verbal alterations; by which course all cases of doubt and difficulty on the score of law can be brought before the Sudder Court for judicial investigation and decision.

I have &c.

Fort William, 29 May 1840. (signed) *J. Hawkins*, Register.

(C.) No. V.
Special Appeals.

(No. 1187.)

From *M. Smith*, Esq. Officiating Register to the Court of Sudder Dewany Adawlut, North Western Provinces, to *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 1745, dated 29th ultimo, communicating the remarks and opinion of the Presidency Court upon the question raised by the Legislative Council regarding the alteration of the existing course on occasions of a difference of opinion between the Sudder Courts, and respecting the promulgation of constructions of law by circular orders; and in reply I am instructed to request you will refer the court to my address, No. 1034, dated 22d idem, which, with its enclosures, had not come under the consideration of the Calcutta Court, at the time of writing your letter under acknowledgment, as it was not despatched hence till after that date.

S. D. A. N. W. P. Present: W. Lambert, B. Tayler, and F. Currie, Esqrs. Judges, and G. P. Thompson, Esq. Officiating Judge.

2. From a perusal of the papers which accompanied that communication the Presidency Court will see that this Court generally agree in the view taken by them of the subject, and expressed in para. 7 of your present letter; but on certain points of difference among the judges of the Allahabad Court the sentiments of your court are still looked for.

3. With regard to your final paragraph, which touches on the mode of meeting the cases in which, under the existing law, the decision of the zillah judge is final, and proposes to suggest the expediency of rescinding Clause 1, Section 4, Regulation II. of 1825, and re-enacting Clause 1, Section 3*, Regulation IX. of 1819, with some verbal alterations, I am directed to state, that this court do not quite perceive how this will meet what is required, since Clause 2, Section 2, Regulation IX. of 1819, refers to points of justice and not law, and (the jurisdiction of the court remaining the same) merely extends the grounds on which a special appeal would be admissible. This Court would wish to be informed whether the rescission of Clause 1, Section 28, Regulation V. of 1831, is not also contemplated by your court.

I have, &c.

Allahabad,
19 June 1840.

(signed) *M. Smith*,
Officiating Register.

(No. 1972.)

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, to *M. Smith*, Esq. Officiating Register of the Sudder Dewany Adawlut.

Sudder Dewany Adawlut. Present: R. H. Rattray, C. Tucker, and D. C. Smyth, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

Sir,

I AM directed by the Court to acknowledge the receipt of your letter, No. 1034, of the 22d ultimo, and to state that they await a reply to my letter, No. 1745, of the 29th idem, on the same subject, before they submit the correspondence to the Government.

2. As regards the mode of deciding points, when the eight permanent judges of the two courts are equally divided (a case very seldom likely to occur), the Court are of opinion, that the best way of disposing of the question will be then to submit the matter for the judgment of the temporary judge who may have been longest attached to either court.

I have, &c.

Fort William, 19 June 1840.

(signed) *J. Hawkins*, Register.

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* Apparently misquoted for Cl. 2, Sec. 2, Reg. IX. of 1819, which is repealed by Cl. 1, Sec. 4, Reg. II. of 1825.

(C.) No. V.
Special Appeals.

(No. 1284.)

From *M. Smith*, Esq. Officiating Register to the Court of Sudder Dewany Adawlut, North Western Provinces, to *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, Fort William.

Sir,

S. D. A. N. W. P. Present: W. Lambert, B. Tayler, and F. Currie, Esqrs. Judges, and G. P. Thompson, Esq. Officiating Judge.

I AM directed to acknowledge the receipt of your letter, No. 1972, dated 19th ultimo, and with reference to its second para., which contemplates as the best mode of procedure in relation to questions on which the eight permanent judges of the two courts may be equally divided, the submission of the point for the judgment of the temporary judges who may have been longest attached to either court, to say that, in the opinion of this Court, the adoption of such a course would be to base a permanent rule upon a temporary arrangement, and would involve a solecism in principle; and the Court are accordingly rather disposed to adhere to their former proposition, as developed in the Minutes recorded by the judges of this Court.

2. On the other points there seems to exist no difference of opinion requiring further discussion.

I have, &c.

Allahabad,
3 July 1840.

(signed) *M. Smith*,
Officiating Register.

(True copies.)

(signed) *M. Smith*, Register.

(True copies.)

(signed) *J. Thomason*,
Secretary to the Government, N. W. Provinces.

FORT WILLIAM, Legislative Department, 19th July 1841.

Legis. Cons. 19 July 1841. No. 47.

THE following draft of a proposed Act was read in Council for the first time on the 19th July 1841.

ACT No. — of 1841.

An Act for amending the Rules of Special Appeals.

1. It is hereby enacted, that Clauses 1, 2 and 4, Section 2, Regulation XXVI. 1814; Section 7, Regulation XIX. 1817; Sections 2, 3, 4, 5 and 6, Regulation IX. 1819; Clause 1, Section 28, Regulation V. 1831; and Section 6, Act XXV. of 1837 of the Bengal Code, be repealed.

2. And it is hereby enacted, that from and after the day of 1841, a second or special appeal shall lie to the Courts of Sudder Dewanny Adawlut, at Calcutta and Allahabad, respectively, from all decisions passed in regular appeals in any civil court in the manner hereinafter specified.

3. And it is hereby enacted, that except in cases in which the petition relates to a decision passed in regular appeal by a zillah or city judge, every application for the admission of a special or second appeal shall be heard within the period limited for the admission of a regular appeal by the judge of the zillah or city within which the regular appeal has been decided; and every application for the admission of a special or second appeal against a decision passed in regular appeal by a zillah or city judge, shall in like manner be heard by a single judge of the Court of Sudder Dewanny Adawlut.

4. And it is hereby enacted, that no special or second appeal shall be admitted in any case, unless the judgment appealed against be inconsistent with some established judicial precedent, or involve some question of law, usage, or practice, upon which there may exist reasonable doubts.

5. And it is hereby enacted, that the judge by whom such application for the admission of a second or special appeal may be heard, shall call before him the special appellant, or his vakeel or agent, and shall, at his discretion, call for and peruse any document forming part of the record of the cause which he may deem proper, and shall, by such other inquiries as he may consider necessary, determine the point or points on which the appeal is liable, under this

(C.) No. V.
Special Appeals.

this Act, to be specially tried by the Courts of Sudder Dewanny Adawlut; and shall reduce the said point or points to writing in the form of a certificate, and shall transmit the same in the vernacular language, together with an English translation thereof, attested by his official seal and signature, with the original petition for the admission of the second or special appeal, and copies of the decrees passed in the case to the register of the Courts of Sudder Dewanny Adawlut, to be tried by those courts in due course; and it shall be lawful for the judge to reject any such petition at his discretion, and his order so rejecting a petition for a special or second appeal shall be final.

6. And it is hereby enacted, that the Courts of Sudder Dewanny Adawlut shall in every case transmitted to or admitted by them, try and determine the point or points certified as above enacted, and no other point or part of the case whatever.

7. And it is hereby enacted, that it shall be competent to the Courts of Sudder Dewanny Adawlut, in any case in which the special ground of appeal may appear to have been incorrectly or incompletely certified by a zillah or city judge, to return the certificate for amendment; or in cases in which it may appear to have been improperly transmitted, to annul the certificate altogether, without requiring the attendance of the special appellant or his vakeel or agent.

8. And it is hereby enacted, that nothing contained in this Act shall be construed to interfere with the authority vested in a single judge of the Court of Sudder Dewanny Adawlut, or in a zillah or city judge, under the provisions of Regulation IX. 1831, and Act VII. of 1838, of issuing any injunction to the lower courts, for the revision of any case on the grounds and in the manner laid down by that Regulation and Act.

9. And it is hereby enacted, that nothing contained in this Act shall affect the trial of second or special appeals which shall have been admitted and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be tried and decided in the same manner as if this Act had not passed.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 19th day of September next.

(signed) *T. H. Maddock*,
Secr to the Govt of India.

(No. 95.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Legis. Cons.
19 July 1841.
No. 48.

Sir,

With reference to your letters, Nos. 1396 and 858, dated respectively the 22d August 1839, and 27th May 1841, with enclosures, I am directed to transmit to you, for submission to the Right honourable the Governor of Bengal, the accompanying draft of a proposed Act, this day read in Council for the first time, for amending the rules of special appeals, and which, his Lordship will observe, embodies the amendments proposed by the Sudder Court in their register's letter, No. 1704, of the 14th May last.

Legislative Dep.

2. The original enclosure of your letter of 27th May last, is returned herewith.

I have, &c.

Council Chamber,
19 July 1841.

(signed) *T. H. Maddock*,
Secy to the Govt of India.

(C.) No. V.
Special Appeals.

(No. 88.)

Legis. Cons. 19 July 1841. No. 49.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. Thomason*, Esq. Secretary to the Government, North Western Provinces.

Sir,

Legislative Dep.

WITH reference to your letter, No. 887, dated the 13th May last, with enclosures, I am directed to transmit to you, for submission to the Honourable the Lieutenant-governor North Western Provinces, the accompanying draft of a proposed Act, this day read in Council for the first time, for amending the rules of special appeals.

I have, &c.
(signed) *F. J. Halliday*,
Secy to the Govt of India.

Fort William, 19 July 1841.

Legis. Cons. 9 August 1841. No. 22.

(No. 113.)

From *T. H. Maddock*, Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

WITH reference to your demi-official communication of the 7th instant on the subject, I have the honour, by direction of the Right honourable the Governor-general in Council, to transmit to you, for consideration of the Law Commission, the papers noted in the margin, connected with the subject of the draft Act for amending the rules of special appeals.

2. You are requested to return the original papers when they are no longer required.

I have, &c.
(signed) *T. H. Maddock*,
Secretary to the Government of India.

Council Chamber, 9 August 1841.

Legislative Consultation, 10 October 1836, No. 16 to 19
„ 4 Dec. 1837 „ 10 & 11
„ 2 April 1838 „ 26 to 31
„ 14 May 1838 „ 23
„ 16 July 1838 „ 18 to 20
„ 6 August 1838 „ 12 to 15
„ 17 Dec. 1838 „ 20 to 22
„ 8 July 1839 „ 2 to 5
„ 21 October 1839 „ 10 to 12
„ 11 Nov. 1839 „ 23 to 27
„ 30 Dec. 1839 „ 19 to 20 A
„ 30 March 1840 „ 3 to 6
„ 30 March 1840 „ 12 to 19
„ 13 July 1840 „ 12
„ 19 October 1840 „ 11 to 13
Copies „ 5 April 1841 „ 1 to 7
Copies „ 19 July 1841 „ 42 to 49

(No. 1370.)

Legis. Cons. 4 Oct. 1841. No. 1.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dep.

I AM directed by the Right hon. the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government, the accompanying letters* relating to the proposed "Act for amending the Rules of Special Appeals," a copy of which was received with your letter, No. 95, of the 19th July last, and is now returned with the Sudder Court's amendments.

* Register Sudder Dewany Adawlut, No. 3018, of the 20th ultimo; Additional Judge of Chittagong, No. 103, of the 25th ultimo.

I have, &c.
(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

Fort William, 7 September 1841.

P.S. Please to return the enclosures.

(C.) No. V.
Special Appeals.

(No. 3018.)

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Legis. Cons. 4 Oct. 1841. No. 2.

Sir,

I AM directed by the Court to acknowledge the receipt of the Resolution of the Right hon. the Governor of Bengal, No. 1229, of the 3d instant, and to state for his Lordship's information, that they have no further suggestions to offer respecting the draft of Act for amending the law of special appeal; but the suggestion in para. 3 of my letter, No. 1704, of the 14th May last, not being sufficiently specific, the alteration intended by the Court has been made in the printed draft received with the Resolution, both which are herewith returned.

Sudder Dewany Adawlut. Present: C. Tucker, and E. Lee Warner, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

I have, &c.

Fort William,
20 August 1841.

(signed) *J. Hawkins*,
Register.

(No. 103.)

From *F. Skipwith*, Esq. Additional Judge of Zillah Chittagong, to *F. J. Halliday*, Esq. Secretary to Government, Judicial Department.

Sir,

IN the proposed Act for amending the rules of special appeals read in Council for the first time on the 19th July 1841, I beg respectfully to suggest, that in the 4th section provision be made for the admission of an appeal, when the judgment against which the appeal is preferred shall, from the exhibition of another decree of the same court, or of another court having jurisdiction in the same suit, or in a suit founded on a similar cause of action, clearly appear to be in opposition thereto or inconsistent with such other judgment.

2. The words quoted above are the substance of Sect. 9, Regulation XIX. 1817, which is proposed to be rescinded; but I would add a proviso, that such final decrees must have been exhibited at the trial of the regular appeal, or good and satisfactory cause be shown for the omission.

3. Nearly all the special appeals pending in this district are founded on this Regulation, but for the purpose of retarding the decision of the suit, the previous final decree is seldom exhibited in the court of regular appeal.

I have, &c.

Additional Judge's Office,
Zillah Chittagong,
25 August 1841.

(signed) *F. Skipwith*,
Additional Judge.

(No. 1716.)

From *J. Thomason*, Esq. Secretary to the Government, North Western Provinces, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department, Fort William.

Legis. Cons. 4 Oct. 1841. No. 3.

Sir,

IN reply to your letter, dated 19th July last, No. 88, I am directed to request that you will lay before the Right hon. the Governor-general, the annexed copies of letters from the Court of Sudder Dewany, dated the 9th and 30th July, containing their sentiments on the proposed enactment for amending the rules of special appeals.

Judicial Dep.

2. The Honourable the Lieutenant-governor is disposed to concur with the Court of Sudder Dewany Adawlut at Allahabad in the general drift of the remarks they have recorded on this subject.

3. Sec. 4 of the proposed Act appears to agree in its main provisions with Sec. 2, Reg. XIV. 1814, which mainly at present regulates the admission of special appeals. This law has in practice been found to restrict the power of admitting special appeals within such narrow limits as amounts to an absolute denial of justice in many cases. Individual instances might easily be adduced

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to show how the rule in question has operated. His Honour cannot contemplate without great apprehension this legal prohibition as it were of redress in cases where injustice is palpable. The Court rightly point out the altered state of circumstances, which renders the maintenance of these restrictions neither necessary nor politic. It is now most desirable to increase the facilities for the maintenance of an active and searching control by the superior over the inferior tribunals, and with this view a greater latitude should be allowed for the admission of appeals.

4. The Court, in paragraph 15 of their letter of July 9th, advocate the revival of the provisions of Sec. 2, Reg. IX. 1819, as regards all appeals from zillah judges, with exception to suits for personal property below 150 Rs. in amount, and also in special appeals to zillah judges from the decisions of munsiffs. The Regulation in question provides for the admission of an appeal "whenever, on a perusal of the decree of the lower court, there may appear strong probable grounds, from whatever cause, to presume a failure of justice."

5. His Honour would admit a special appeal, not only in the cases stated in the draft Act, but also whenever it appears on the face of the proceedings, that the decision affirms as a fact that which is not established by the evidence recorded in the case, or passed over in silence that which is stated in the evidence and may not be consistent with the assumption on which the decree may be founded; or in other words, he would consider the incompatibility of the decree with the recorded evidence as a good cause for special appeal. This object might be attained by adding to Sec. 4 of the proposed draft, "or be incompatible with the recorded evidence." This would render the grounds of appeal less vague than proposed by the Court of Sudder Dewany Adawlut, and would probably answer every necessary purpose.

6. The Court would leave to the zillah judges the trial of all special appeals, in cases so appealable to them, whilst the proposed Act would make such appeals cognizable only by the Court of Sudder Dewany Adawlut alone, on certificates of admissibility given by the zillah judge, withheld at his discretion, but capable of amendment or annulment by the higher tribunal. In this respect his Honour is disposed to prefer the provisions of the draft Act. It extends the sphere of control of the Sudder Dewany Adawlut, increases their power of superintending the zillah judges, and is likely to conduce greatly to sound and uniform administration of the law.

7. In conclusion, I am directed to express concurrence in the concluding paragraph of the Court's letter, and to observe with great satisfaction, that the files of the court are now so clear from arrear, that they are well able to address themselves with vigour to the administration of this important part of their duties. If the case should be otherwise in the lower provinces, it is hoped that the press of business there will not be allowed to operate so as to occasion the imposition of unnecessary or injurious restrictions to the effective administration of justice where no such pressure exists. In proof of the present state of work in the Court of Allahabad, copies are enclosed of the last return, and of a running abstract, showing the state of the files in each month of the current year.

I have, &c.

Agra, 13 September 1841.

(signed) *J. Thomason,*
Secy to the Govt, N. W. P.

ABSTRACT.

In reply to letter dated 19th July 1841, transmitting copies of letters from the Sudder Dewany Adawlut, North West Provinces, containing the sentiments of the Court in the proposed enactment for amending the rules of special appeals.

(C.) No. V.
Special Appeals.

Legis. Cons.
4 Oct. 1841.
No. 4, Encl.

(No. 1164.)

From *M. Smith*, Esq. Register to the Court of Sudder Dewany Adawlut, North West Provinces, to *J. Thomason*, Esq. Secretary to the Honourable the Lieut-Governor in the Judicial Department, North West Provinces, Agra.

Sir,

In pursuance of your intention, noted in *italics* in the margin of the opening paragraph of my letter, No. 656, dated 10th of April last, and with reference to the letter of the register to the Calcutta Court, dated 8th January last, No. 192, copy of which, as well as of its annexures, was therewith submitted, I am directed now to request, that you will lay this letter before the Honourable the Lieut.-governor for consideration, and eventual transmission to the Supreme Government, on the subject of the proposed alteration in the law of special appeal, on the plan of opening the Sudder Court to all special appeals, and constituting it the sole tribunal for hearing this description of cases.

S. D. A. N. W. P.
Present:
B. Tayler, G. P. Thompson, and F. Currie, Esqrs. Judges, and H. H. Thomas, Esq. Officiating Judge.

2. The sentiments of the Government of India on this question are stated at length in Mr. Secretary Halliday's address to the secretary to the government of Bengal, dated 19th October 1840, No. 441, which concludes with the expression of a desire, that the opinions therein stated should be referred to the two courts, that, if they concurred with the Supreme Government, the necessary measures might be taken to carry the plan into effect.

3. In their address of the 8th January last, to the government of Bengal, the Court of Calcutta accordingly stated an opinion, that the proposed plan of opening the Sudder Court to all special appeals was liable to serious objection from the large number of such appeals which would be preferred in consequence, and which would increase beyond due bounds the business of the Court. The Presidency Court added, that in their view, the object of Government would be attained by permitting the zillah courts to certify to the Court the propriety of admitting an appeal in cases involving points of law, not before judicially decided.

4. By this court the existing law regarding special appeals has been long considered defective, and a short notice of the various regulations that have from time to time been enacted, for restricting or extending the admission of appeals of this nature, will form no unsuitable preface to the further observations of the court on the subject, and to the enunciation of the remedy which they would propose.

5. First, the following enactments, viz. Sec. 24, Reg. XLIX. 1803, and Sec. 10, Reg. II. and Clauses 2 and 3, Sec. 9, Reg. VIII. 1805, empowered the Provincial and Sudder Courts to admit a special appeal from the decrees of the lower courts, "if on the face of the decree, or from any information before the court of appeal, it shall appear to them erroneous or unjust, or if from the nature of the cause, as stated in the decree or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal."

6. These provisions appearing in process of time to have been found to give too great a latitude to the courts, were accordingly modified by Sec. 2, Reg. XXVI. 1814, "with a view to the more speedy administration of civil justice." That section sets forth that "no special or second appeal shall be admitted, unless upon the face of the decree, or of documents exhibited with it (assuming all the facts of the case as stated in the decree), the judgment shall appear to be inconsistent with some established judicial precedents, or with some regulation in force, or with the Hindoo and Mahomedan law, in cases which are required to be decided by those laws, or with any other law or usage which may be applicable to the case, or unless the judgment shall involve some point of general interest or importance, not before decided by the superior courts. Sec. 7, Reg. XIX. 1817, has recognised additional grounds for the admission of special appeals, which seem to have been unintentionally omitted by the framers of Reg. XXVI. 1814, the spirit of which enactment was however maintained.

7. Reg. IX. 1819 follows, declaring* that "experience has shown that it would be conducive to the ends of civil justice to modify and extend the existing rules, which limit to certain specific grounds the admission of special

* Preamble.

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Clause 2, sec. 2.

appeals by the Sudder Dewany Adawlut," and providing for their admission "whenever on a perusal of the decree of the lower court, there may appear strong probable ground, from whatever cause, to presume a failure of justice."

8th. This practice continued till 1825, when it being discovered that special appeals had become too numerous, occupied too much time, and "impeded the trial and decision of other more important cases, whilst at the same time such applications on insufficient grounds were encouraged by the indefinite terms of Clause 2, Sections 2. 9, 1819," that clause was accordingly, "with a view to provide against the continuance of these impediments to the general administration of civil justice," rescinded by Clause 1, Section 4, Regulation II. 1825, and the superior courts were directed to be guided in the admission of special appeals by the enactments enumerated in the margin.

Sec. 2, Reg. XXVI. 1814.
Sec. 7, Reg. XIX. 1817.
Sections 3, 4 & 5, Reg. IX. 1819.

9. The Court observe in this place, that while the restrictions on the admission of special appeals imposed in 1814 and revived in 1825, are up to the present day in force, the rules which might have been indispensable at either of those junctures by no means apply to the state of things now, which is marked by improvements and changes as important as various. Among them are a Court of Sudder Dewany and Nizamut Adawlut established in the north western provinces, the provincial courts of appeal abolished, and the arrears of suits which loaded them, cleared away; the primary award of all the litigated property in the country consigned to a class of uncovenanted and native judges; the zillah judges grown up into judges of appeal and circuit; an organised, regular, and active supervision in operation, such as in 1825 was not thought of; hopeless accumulations of civil business, which had encumbered the files for many years, mocking all attempts at their reduction, no longer in existence; the adjudication of suits, and the general dispatch of civil business accelerated in an extraordinary degree; all these circumstances go to prove that the rules prescribed then for the admission of special appeals are not requisite in the same rigour now, and that their relaxation would involve at this period none of the evils formerly experienced, or risks apprehended from the measure.

10. There are also other important points to be considered in reference to the change produced in our judicial system by the enactment of Regulation V. 1831. Firstly, as relates to the court of first instance and appeal, in which the great mass of the judicial business is determined. By the extension of the powers of munsiffs and sudder ameens, both in respect to the value of suits and to the making claims for real property recognisable by them, the most important cases, involving the most extensive interests, are tried in these courts, while by the creation of the office of principal sudder ameen, and the constituting it a tribunal of appeal from the munsiffs' and sudder ameens' decisions, a very large proportion of the whole judicial business is now finally determinable in the native tribunals, a special appeal from their decision lying only on the very restricted and limited points above noticed; and the cognizance of all questions on the general merits of the decisions being entirely excluded from the European judges; and, 3dly, as regards the restricted means of control over the judges possessed by the Court, and the little opportunity presented them of estimating the character of the decisions of those officers. Formerly, all suits exceeding Rs. 5,000 in value were tried by the judges; these were liable to a regular appeal to the Court, and though perhaps not many, they still supplied materials for testing the official fitness and qualifications of our judges. Under the existing system, all original suits, of whatever amount, are tried in the first instance by the principal sudder ameens, a very few, which may for special reasons be retained by the judge, excepted, consequently scarcely any decision of a judge can undergo the scrutiny of the Court, save in special appeal.

11. Nor does the trial of special appeals present for the most part any occasion to look into the character of the decision of the zillah court. The grounds on which a special appeal is prayed for, are required to be engrossed on the back of the petition of appeal, and on these alone it is frequently rejected. Most commonly the real question at issue turns on the facts of the case, the decision in which may be at variance with the evidence adduced, or may even have nothing to do with the point at issue. The vakeels therefore exert their ingenuity to show that the judgment appealed from is contrary to some law or established custom, and should they succeed in obtaining the reception of the appeal, they proceed to argue the case entirely on its merits. By Clause 1,

Section

Section 2, Regulation XXVI. 1814, and Construction No. 246, the supreme court is required to take the facts assumed by the lower court, and the only point left for them to determine is, not whether the lower has taken a correct view of the merits of the case, and passed a judgment on the points whereon the decision should properly rest, but whether the arguments based on the alleged facts are conformable to law.

12. In practice, the Court believe it would be commonly found that the district judges deviate from the strict interpretation of the law in the admission of special appeals, on grounds which would at once meet with rejection by the Sudder Court. In the event of the Court's rejection of an application after considering the grounds set forth in it, no insight is afforded into the proceedings of the judges' or principal sudder ameens' courts, as it would be fruitless labour to ascertain the merits of the decision, when, however unjust it might appear, the Court could not interfere to render justice. This remark applies with even greater force to the special appeals before the zillah courts. The Court have frequently seen decisions passed by a principal sudder ameen in appeal, which would have called for reversal in special appeal by the judge, had such a course been permitted by law; and they have often themselves been obliged to reject an application for special appeal when they felt that a manifest injustice had been committed by the decision of the zillah judge. The continuance of the present law therefore, must, the Court conceive, operate as a denial of substantial justice.

13. The monthly statements forwarded to the Court are in no way calculated to supply the defect. They afford no information of the character of a judge's proceedings, or means of judging how far he has properly considered a case, or passed a hasty decision in appeal without adverting to the pleas urged, or examining the record to see whether the facts are correctly stated, and supported by credible evidence. The use of the statements as a means of control and check is merely limited to the preventing an accumulation of arrears, by exacting a certain quantity of work without reference to its quality, and by compelling the courts to dispose of cases of long standing.

14. It may be also urged as an argument in favour of a change, that while the Court are required to nominate the three most deserving judicial officers for promotion, on the occurrence of any vacancy in the office of sudder ameen or principal sudder ameen, they possess no scale by which the relative merits of the uncovenanted judges can be tried, and are thus compelled to depend altogether on the character given of them by the judge; the Court's estimation of which must be much influenced by the degree in which their opinion of the judgment of that officer and the opportunities he may have had of forming one, is favourable or the reverse.

15. As a remedy for the above serious defects, the Court would now propose so to modify the law of special appeal, as to declare the admissibility by the Sudder Court of a special appeal from the decision of the zillah judge in all cases, with exception to suits for personal property below Rs. 150 in amount, on the extended grounds set forth in Sect. 2, Regulation IX. 1819, which should be re-enacted, the subsequent law, repealing it, being first rescinded, as well as Clause 1, Sect. 28, Regulation V. 1831. The extension of the grounds for the reception of special appeals by the revival of Sect. 2, Regulation IX. of 1819, should also be declared applicable to appeals of that description made to the zillah judges from regular appeals tried by principal sudder ameens, from decisions of the sudder ameens and munsiffs. The Court beg to propose this modification of the plan suggested by the government of India, which, they believe, will meet the ends of justice; though they recognise the principle contained in Mr. Halliday's letter, that, when practicable, special appeals should lie only to one, and that the highest tribunal.

16. It should be provided, that the judge of the Sudder Court, admitting the special appeal under the proposed rule, should state distinctly in his proceeding, and in an English note, the specific point or points on which the admission is grounded; and that such point or points, thus indicated, should alone be tried by the court. The rule, requiring the certificate of the vakeel or mookhtar on the back of the special appeal, to the effect that he has examined the grounds of the petition, and considers them sufficient, should also be maintained in full force. These and my other precautions might be included in rules to be laid down for regulating the practice of the court in this

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this matter, so as to ensure uniformity of decision, and prevent the presentation of litigious appeals.

17. It might in many cases, the Court observe, require a very full investigation into the proceedings of both the lower courts before an order could be passed on the merits of the appeal; but even if ultimately rejected, the Court would still have thus had the opportunity of reviewing the decisions of those tribunals; and by recording a note at the time, of the nature of the decision for deposit with the register, would be able to collect materials from which some distinct judgment of the judicial efficiency of the subordinate courts might be in time deduced.

18. It only remains to notice, in regard to the objections taken by the Calcutta Court, that no apprehension is entertained by the Court of the effect of the proposed change being to overwhelm their file with business, or indeed induce a larger influx of special appeals than can be disposed of consistently with the prompt dispatch of the other duties of the Court. This appears to be shown by the subjoined statement, marked (L.), compiled from returns in the Court's office, which, on a combined calculation on a period of three years, of the proportion of special appeals admitted by the zillah judges from regular appeals decided by the principal sudder ameens, and of the proportion of special appeals likely to be admitted by the Court from decisions of judges in regular appeal from sudder ameens and moonsiffs, represents on a rough estimate the probable monthly income in the Court at 4,536.

I have, &c.

Allahabad, 9 July 1841. (signed) *M. Smith*, Register.

ABSTRACT.

Paras. 1, 2, 3. SUBJECT stated, viz. proposed alteration of law of special appeal, by opening the Sudder Court to all special appeals, and making it the sole court for hearing such appeals; allusion to opinion of Supreme Government, and of Calcutta Court, who object to plan, for reasons stated, and suggest another plan.

Paras. 4, 5, 6, 7, 8. Preparatory notice taken of various enactments made from time to time, restricting or extending the admission of special appeals; showing the state of the law in that particular at present.

Paras. 9 to 14 inclusive. Various arguments adduced in favour of altering that law; viz. numerous reforms in systems of judicial administration and practice; changes caused by Regulation V. of 1831; inadequacy of the law to afford redress, or enable the Sudder Court to obtain an insight into the proceedings of the lower courts, with a view to their control.

Paras. 15, 16, 17. Remedied arrangement stated, as proposed by Court, in modification of plan advocated by Government of India, and necessity of certain precautionary provisions noticed.

Para. 18. Objection of Presidency Court, that change would tend to overload their files with business, declared not to be applicable to probable state of things in Western Court.

(C.) No. V.
Special Appeals.

STATEMENT of APPEALS decided in the several Zillahs, in 1838, 1839, and 1840.

ZILLAH.	Regular Appeals from the Principal Sudder Ameen, decided by the Judge.	Special Appeals from the Principal Sudder Ameen, decided by the Judge.	Regular Appeals from the Sudder Ameens, decided by the Judge.	Regular Appeals from the Moonsiffs, decided by the Judge.	Regular Appeals from Sudder Ameens, decided by the Principal Sudder Ameen.	Regular Appeals from Moonsiffs, decided by the Principal Sudder Ameen.	Number of Special Appeals admitted by the Zillah Judges from Regular Appeals, decided by the Principal Sudder Ameens, in 1838, 1839, and 1840.
Delhi	66	80	48	110	70	357	105
Saharunpore	31	-	24	296	—	—	—
Meerut	255	123	-	164	-	788	133
Allighur	119	49	315	315	-	225	45
Meradabad	55	275	64	413	148	835	311
Bareilly	159	155	66	232	106	648	159
Agra	133	4	17	490	-	41	4
Furruckabad	153	23	9	559	3	275	21
Munpoorey	48	5	2	131	-	68	4
Etawah	23	-	17	96	-	39	—
Cawnpore	118	109	37	195	20	296	103
Futtehpore	113	22	-	273	-	217	22
Bundelkhund	59	56	52	79	-	217	68
Allahabad	64	29	67	363	61	182	33
Guruckpore	110	161	107	645	156	925	163
Azimgar	35	73	94	396	4	481	84
Jounpore	73	147	32	427	40	556	128
Mirzapore	213	284	64	351	30	398	231
Benares	84	22	85	722	-	66	26
Ghazeepore	130	47	184	841	-	441	65
	2,041	1,664	1,284	7,098	638	7,055	1,705

As 7,693 : 1,664 : 100 : 21·63 — The rate per cent. of the special appeals admitted by the zillah judges from regular appeals decided by the principal sudder ameens.

Then, If 100 : 21:63 : $\frac{8,382}{3}$: 544·32 — The number of special appeals likely to be admitted by the court from the decisions of judge's regular appeal from sudder ameens and moonsiffs in any one year, or 544·32. 45·36, the probable monthly income in the court.

(signed) *J. P. Ledlie*, Assistant Register.

(True copy.)

(signed) *M. Smith*, Register.

(No. 1252.)

From *M. Smith*, Esq. Register to the Court of Sudder Dewany Adawlut, Allahabad, to *J. Thomason*, Esq. Secretary to the Honourable the Lieutenant-Governor in the Judicial Department, North Western Provinces, Agra.

Sir,

WITH reference to the draft of a proposed Act for amending the rules of special appeals, read in Council for the first time on the 19th and published in the Calcutta Gazette of 21st instant, I am directed to state that the Court do not consider that any further remarks are necessary on the subject to which it relates, as elucidatory of their sentiments on the matter, beyond what is contained in my communication, No. 1164, dated 9th instant, to your address, which will doubtless have been laid before the Supreme Government before the period fixed for the second reading of the draft, 19th September next.

S. D. A. N. W. P.
Present:
B. Tayler, G. P. Thompson, F. Currie, Esqrs. Judges, and H. H. Thomas, Esq. Officiating Judge.

I have, &c.

(signed) *M. Smith*, Register.

Allahabad, 30 July 1841.

ABSTRACT.

REFERRING to draft of proposed Act for amending law of special appeal courts, sentiments stated to have already been communicated for submission to Supreme Government.

(True copies.)

(signed) *J. Thomason*,
Secy to Govt, N. W. P.

(C.) No. V.
Special Appeals.

ABSTRACT STATEMENT of Causes decided by the Court of Sudder Dewany Adawlut, North-Western Provinces, during the Month of July 1841, and of the Number depending at the end of that Month.

	Regular Appeals.				Special Appeals.			
	Decided on Trial.	Remanded.	Dismissed on default.	Adjusted or withdrawn.	Decided on Trial.	Remanded.	Dismissed on default.	Adjusted or withdrawn.
Mr. B. Tayler - -	2	–	–	–	–	–	–	–
Mr. G. P. Thompson -	–	1	1	–	–	1	–	–
Mr. F. Currie - -	1	–	–	1	–	–	–	–
Mr. H. H. Thomas -	–	2	–	–	2	–	–	–
Messrs. Thomas & Tayler.	–	–	–	–	–	–	–	–
Thompson & Currie -	–	–	–	–	1	–	–	–
Messrs. Tayler & Thomas.	1	–	–	–	–	–	–	–
Messrs. Thomas & Tayler.	1	–	–	–	–	–	–	–
Messrs. Currie&Thompson.	–	–	–	–	1	–	–	–
TOTAL - - -	5	3	1	1	4	1	–	–

	Regular.	Special.	Total.
Pending 30th June 1841.	107	30	137
Received in July 1841	11	7	18
Total - - -	118	37	155
Decided and adjusted or withdrawn.	7	4	11
Remanded - -	3	1	4
Total disposed of	10	5	15
Pending on the 31st July 1841.	108	32	140

Special Appeals:

Pending on 30th June 1841 -	19
Referred in July 1841 - -	21
Total - - -	40
Disposed of in July 1841 - -	17
Pending on 31st July 1841 -	23

1838.	1839.	1840.	1841.	Total.
2	7	54	77	140

Total Amount or Value, Company's rupees 165,905. 12. 7½.

Besides the Decisions, Miscellaneous Orders were passed during the Month of July 1841, by the several Judges, as follows:—

	Miscellaneous Cases.	Miscellaneous Petitions.	Petitions of Special Appeals.	Total.
Mr. B. Tayler - - - - - -	16	65	4	85
Mr. G. P. Thompson - - - - -	11	56	2	69
Mr. F. Currie - - - - - -	24	62	7	93
Mr. H. H. Thomas - - - - -	22	45	4	71
TOTAL - - - - -	73	228	17	318

Certificates, &c. - - - - 116.

MEMORANDUM showing the Number of Cases finally disposed of, and Opinions, not being Final Judgments, recorded by the several Judges during the Month of July 1841.

	Final Judgment.		Opinions.	Total.
	Regular.	Special.		
Mr. B. Tayler - - - - - -	3	–	4	7
Mr. G. P. Thompson - - - - -	2	1	4	7
Mr. F. Currie - - - - - -	2	1	2	5
Mr. H. H. Thomas - - - - -	3	3	1	7
TOTAL - - - - -	10	5	11	26

S. D. A., N. W. P. Allahabad,
12 August 1841.

(signed) *M. Smith*, Register.

(No. 14.)

STATEMENT showing the Number of Appeals preferred to the Nizamut Adawlut from Sentences passed by the Commissioners of Circuit and Session Judges, in Criminal Trials; and from Orders passed by the Commissioners in Cases of a Miscellaneous Nature, during the Month of July 1841, with the Orders passed thereon.

	From Sentences of Commissioners of Circuit and Sessions Judges, in Criminal Trials, including Cases called for on inspection of the Statements.						From Orders passed by the Commissioners in Cases of a Miscellaneous Nature.					
	1. Pending on the 1st June 1841.	2. Preferred during the Month.	3. TOTAL.	4. Order, if confirmed.	5. Order Modified or Reversed.	6. Pending at the end of the Month.	7. Pending on the 1st July 1841.	8. Preferred during the Month.	9. TOTAL.	10. Appeals rejected as not Cognizable.	11. Cases referred for Orders of Government.	12. Pending at the end of the Month.
Delhi Division:												
Commissioners of Circuit	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Delhi	–	1	1	–	–	1	–	–	–	–	–	–
Meerut Division:												
Commissioners of Circuit	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Seharunpore	–	3	3	–	–	3	–	–	–	–	–	–
Ditto of Meerut	1	–	1	–	1	–	–	–	–	–	–	–
Additional ditto of Boolundshuhur	2	–	2	–	–	2	–	–	–	–	–	–
Ditto of Allyghur	–	–	–	–	–	–	–	–	–	–	–	–
Rohilcund Division:												
Commissioners of Circuit	–	–	–	–	–	–	–	–	–	–	–	–
Ditto of Kumoon	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Moradabad	–	–	–	–	–	–	–	–	–	–	–	–
Ditto of Barelly	–	–	–	–	–	–	–	–	–	–	–	–
Additional ditto of Rohilcund	5	1	6	1	5	–	–	–	–	–	–	–
Agra Division:												
Commissioners of Circuit	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Agra	1	–	1	–	1	–	–	–	–	–	–	–
Ditto of Furruckabad	1	4	5	–	1	4	–	–	–	–	–	–
Ditto of Mynpoorey	1	–	1	–	1	–	–	–	–	–	–	–
Allahabad Division:												
Commissioners of Circuit	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Cawnpore	–	–	–	–	–	–	–	–	–	–	–	–
Ditto of Futtehgurh	–	–	–	–	–	–	–	–	–	–	–	–
Ditto of Bundelkund	1	2	3	2	1	–	–	–	–	–	–	–
Ditto of Allahabad	–	–	–	–	–	–	–	–	–	–	–	–
Benares Division:												
Commissioners of Circuit	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Goruckpore	–	–	–	–	–	–	–	–	–	–	–	–
Ditto of Azimghur	–	–	–	–	–	–	–	–	–	–	–	–
Ditto of Jounpore	–	–	–	–	–	–	–	–	–	–	–	–
Ditto of Mirzapore	1	–	1	–	1	–	–	–	–	–	–	–
Ditto of Benares	–	1	1	–	–	1	–	–	–	–	–	–
Ditto of Ghazeepore	2	1	3	2	–	1	–	–	–	–	–	–
Sauger Division:												
Commissioners of Circuit	–	–	–	–	–	–	–	–	–	–	–	–
TOTAL	15	13	28	5	11	12	–	–	–	–	–	–

ABSTRACT STATEMENT of Criminal Trials Decided and Disposed of by the Court of Nizamut Adawlut, North Western Provinces, in the Month of July 1841, and the Number Pending at the end of that Month.

	Trials referred under the Regulations.	Trials called for.	TOTAL.
Pending 1st July 1841	27	15	42
Received in July 1841	33	13	46
TOTAL	60	28	88
Decided in July 1841	50	16	66
Pending 31st July 1841	10	12	22

Of the Trials Decided during the Month,	
Mr. Tayler recorded his opinion on	24
Mr. Thompson ditto ditto	26
Mr. Currie ditto ditto	16
Mr. Thomas ditto ditto	21
TOTAL	87

N. A. North Western Provinces, Allahabad, 12 August 1841.

(signed) *M. Smith*, Register.

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MEMORANDUM of the Number of Cases Depending, Received, and Decided by the Court of Sudder Dewany Adawlut, in each Month, from January 1841.

MONTHS.	Depending.		Received during the Month.		Total.		Decided, Adjusted, or Withdrawn.		Depending at the end of the Month.	
	Regular.	Special.	Regular.	Special.	Regular.	Special.	Regular.	Special.	Regular.	Special.
January - - -	90	27	2	3	92	30	8	1	84	29
February - - -	84	29	10	1	94	30	2	1	92	29
March - - -	92	29	12	10	104	39	4	3	100	36
April - - -	100	36	16	2	116	38	5	4	111	34
May - - -	111	34	8	6	114	40	11	7	108	33
June - - -	*109	33	6	4	115	36	8	6	107	30
July - - -	107	30	11	7	118	37	10	5	108	32
August - - -	Statements not yet received.									
September - -										
October - - -										
November - -										
December - -										

* One regular case was erroneously entered as a Special Appeal in last month's statement. The error now rectified.

MEMORANDUM of the Number of Appeals Depending, Received, and Decided by the Court of Nizamut Adawlut, in each Month, from January 1841.

MONTHS.	Depending.		Received during the Month.		Total.		Decided.		Depending at the end of the Month.	
	Trials referred under the Regulations.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.
January - - -	8	2	15	9	23	11	16	5	*7	6
February - - -	7	6	19	16	26	22	14	10	†12	12
March - - -	12	12	24	20	36	32	12	9	24	23
April - - -	24	23	12	11	36	34	24	16	12	18
May - - -	12	18	24	19	36	37	18	22	18	15
June - - -	18	15	41	24	59	39	32	24	27	15
July - - -	27	15	33	13	60	28	50	16	10	12
August - - -	Statements not yet received.									
September - -										
October - - -										
November - -										
December - -										

* One released.

† One released.

(True copies.)

(signed) *J. Thomason*, Secy Govt, N. W. P.

From *Baboo Prossanno Comar Tagere*, Calcutta, to *T. H. Maddock*, Esq. Secretary to the Government of India.

Sir,

Although the present address is submitted for consideration by a single individual, yet, in consequence of his being largely connected, directly or otherwise, with the landed interest in the permanently settled provinces, and may be presumed to be in a proportionate degree practically acquainted with the workings of the judicial administration in the mofussil, he most humbly trusts that the suggestions herein contained relative to certain provisions of a draft Act recently published, and intituled "An Act for amending the Rules of Special Appeals," will not be deemed unworthy of the attention of the Right hon. the Governor-general of India in Council in the Legislative Department.

The proposed amended law substantially provides that all special appeals from the decision passed in a regular appeal by a zillah judge, shall directly lie to the Sudder Dewany Adawlut, and that petitions for special appeals against the decision of the local subordinate courts (which had been hitherto finally adjudged by the district judges) shall in future be so far entertained by the zillah judge as to be either liable to rejection at the judge's own discretion, and his order thereon to be final, or he is to admit such special appeals; but in the latter case he is required to reduce the grounds for such admission to writing, in the form of a certificate, in the English and vernacular language, which, together with the decree on the case, is to be transmitted to the register of the Sudder Court.

The law further provides, that no special appeal shall be admitted in any case unless it shall appear to the presiding judge that the judgment appealed against is inconsistent with some established judicial precedents, or involved some question of law, usage, or practice, where reasonable doubt might be entertained. It also lays down certain other rules of practice, connected with the special appeal case, for the guidance of the Zillah and Sudder Court, empowering at the same time the latter authority on all such occasions, if it shall appear to it that the grounds for admission of appeal may have been incorrectly or incompletely certified by the zillah judge, or improperly admitted, either to return the proceeding for amendment, or rject the admission altogether, as the court may think fit to determine.

The laudable motive which actuated the Legislative Council in promulgating this modified law is so apparent as not to be misapprehended in regard to its anticipated advantages by the people in general, of its enactment being a desideratum in the administration of the zillah courts, wherein the local judges have the power, in cases of special appeals against the decision of the lower courts, to pass a final decision, notwithstanding that such decision was limited by the Regulations only to points of law, usage, and practice. Hence it frequently resulted, that however intricate and doubtful the point of law involved in a case, yet the decision of a zillah judge was final, and became binding on the district, at least until his successor had an opportunity to deliver his opinion on the said question, which, if it differed from that of his predecessor, on whatever grounds of relevancy, assumed the character of an amended law for the time being. Thus the superior authority (the Sudder Dewany Adawlut) seldom found itself called upon to revise or correct, if erroneous, such legal interpretations.

The system having been allowed to prevail for a series of years, one of its effects on the state of law in the provinces was observable in the circumstance, that in consequence of the judges of the various districts having individually entertained on questions of law opinions at variance with those of similar functionaries in other districts, without being subject to a common superior court for revision, those multifarious constructions of the law have continued, however contradictory, to possess in their respective districts all the force of precedents, and are adopted as rules for the guidance of the courts of lower jurisdiction.

The present modified law is evidently intended to obviate an evil, which, to use the mildest expression, may be characterised as highly objectionable in any well-regulated government, and the people in general will, no doubt, become gradually sensible of the advantages likely to accrue from this beneficial modification.

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fication. By its operation no tribunal but the Sudder Dewany Adawlut, wherein resides the paramount jurisdiction in the country, will be empowered to construct doubtful cases of law; and all subordinate courts being guided by its precedents, no judicial misrepresentation or general misconstruction of legal enactments is likely to occur in the administration of justice in the mofussil courts.

I beg to submit, that in the midst of those anticipations, which call forth the expression of unmixed gratitude, I am led to apprehend that the laudable intention of government may be liable to frustration, and the beneficial ends of the new modified law will eventually be defeated in its practical workings, unless the Supreme Government were disposed to effect a slight alteration in some of its provisions. I therefore presume to take the liberty to submit my humble observations for the consideration of the Right hon. the Governor-general in Council. Should my conclusions prove erroneous, I respectfully trust that I shall be pardoned, on the grounds of the motives by which I am actuated.

I beg with due deference to submit, that that part of the modified law which empowers a zillah judge to reject petitions for special appeal at his own discretion, making his order so rejecting the same final, is, to a certain extent, liable to misapplication. Here his admitted appeal may be expected to undergo a severe ordeal in the superior court, and in case of his being found to have committed errors in opinion, he will, in all likelihood, subject himself to the censure of the superior authority. Hence, in every instance of admission of appeal, it may be anticipated that he will hazard his opinion with special caution and hesitation, while, on the contrary, rejecting a petition, he does not become liable to incur the same degree of responsibility, and is not even called upon to specify his grounds in detail for such rejection. He, in the just exercise of his discretion, may barely state, on rejecting the petition, that he does not find sufficient grounds for admitting the appeal, making himself, in such instances, the sole and secret depository of his own motives and reasons for his negative; and the order on such petitions being legally final, he can never be called upon to account for his proceedings to any controlling authority, nor to the parties affected thereby, who are thus debarred from the benefit of ascertaining the merits and principle of his decision.

Man being a creature of circumstance, our mofussil judges are supposed to come within the scope of this general maxim. If there existed implicit and unlimited confidence in the unerring character of their moral rectitude, or in the infallibility of their judgment, this circumstance would have obviated the necessity of resorting for relief to the process of an expensive and dilatory appeal court, nor could any reasonable ground be adduced to justify any fear of misapplication of the law in question; but an Indian judge, independently of the peculiarity of his circumstances, is surrounded with amlahs, a description of officials justly considered the worst instruments in the administration of justice. Thus he will in all probability feel naturally disposed to reject applications for appeal, rather than hazard the merits of his opinion and legal reputation by admitting the same, which consequence will, as often as it may recur, practically defeat the laudable design of the ruling authority.

Under these circumstances I may be permitted to suggest that a provision be inserted in the said law, to the effect, that the zillah judge shall likewise be required, in the event of rejection or admission of a petition for appeal, to transmit a certificate in the English and vernacular language, to the register of the Sudder Court, who shall be enjoined to prepare in a condensed form the substance of each rejecting certificate, and collectively lay the same periodically before the English sitting of the Sudder judges. This modification, if the government should deem it proper to sanction, and adopt its provision, will not only operate as a wholesome check on the unlimited discretion of the zillah judges, but simultaneously afford to the controlling authority further and more ample means of forming its opinion of the qualification of subordinate judicial functionaries, and of correcting their errors of judgment for their future guidance.

I have, &c.

Calcutta,
9 August 1841.

(signed) *Prossanno Comar Tagere.*

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(No. 137.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 4 Oct. 1841. No. 6.

Sir,

In continuation of my letter, No. 113, dated the 9th August last, I am directed, by the Right honourable the Governor-general in Council, to transmit the accompanying papers noted in the margin, regarding the proposed law for amending the rules of special appeals, and to request that the Law Commissioners will favour the Supreme Government with their opinion on the subject as speedily as may be convenient.

Legislative Dep.

Letter from Baboo Prosseno Comar Tagere, dated 9 Aug. 1841.
„ from Secretary Government of Bengal, No. 1370, dated 7 September 1841, with Enclosure.
„ from Secretary Government of North-western Provinces, No. 1716, dated 13 September, with Enclosures.

I have, &c.

Council Chamber,
4 October 1841.

(signed) *T. H. Maddock*,
Secretary to the Government of India.

From the Indian Law Commissioners to the Right Hon. the Earl of *Auckland*, G.C.B. Governor-General of India, in Council.

Legis. Cons. 20 Dec. 1841. No. 22.

We were about to report upon the subject of special appeals, with reference to the draft Act published on the 19th July last, and the papers transmitted to us with Mr. Secretary Maddock's letter, dated the 9th August, when we received the further papers transmitted to us by your Lordship's order on the 4th October.

Received 19 Aug. From Mr. Secretary Maddock, received 8th Oct.

2. In our Report, dated the 21st August 1840, upon the judicial courts in the presidency of Madras, we took occasion to express our opinion that "all special appeals should be heard and determined by the highest court;" and in the draft Act submitted with our further Report on this subject, dated the 10th July last, we introduced provisions to this effect. We at the same time recommended, that the judges of the Sudder Adawlut should be restrained from admitting special appeals upon any other grounds than those distinctly specified in Clause 1, Section 4, Regulation XV. of 1816, of the Madras Code, corresponding with Section 2, Regulation XXVI. of 1814, of the code of Bengal; that is to say, "unless the judgment shall appear to be inconsistent with some established judicial precedent, or with some Regulation in force, or with the Hindoo or Mahomedan law, in cases which are required to be decided by those laws, or with any other law or usage which may be applicable to the case, or unless the judgment shall involve some point of general interest or importance not before decided by the superior courts."

3. From the papers furnished to us with Mr. Secretary Maddock's letter of 9th August, we understood, as did your Lordship in Council, that both the Sudder Courts at Calcutta and Allahabad were likewise of opinion that special appeals should all be heard and determined by the chief court of appeal, and we learned that this opinion had been approved and adopted by the Supreme Government.

To government of Bengal, dated 19 Oct. 1840, p. 5.

4. From the papers last furnished to us we find, however, that the Sudder Court at Allahabad, although "they recognise the principle that special appeals should lie only to one, and that the highest tribunal;" yet recommend, that special appeals "from regular appeals tried by principal sudder ameens, from decisions of the sudder ameens and moonsifs," should be excepted and and left to be determined by the zillah judges. In this recommendation, we observe the Hon. the Lieutenant-governor of the North West Provinces does not concur, but prefers that such appeals should be cognizable only by the Court of Sudder Dewanny Adawlut, "as likely to conduce greatly to sound and uniform administration of the law."

Letter from the register, 9 July 1841, p. 15.

From Mr. Secretary Thomason, 13 September, p. 6.

5. It appears that the Allahabad Sudder Court propose to leave the determination of special appeals to the zillah judges, as above stated, because they apprehend that, by extending the grounds of special appeal as they recommend, the

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the number of such appeals from decisions passed by the zillah judges themselves, in cases tried originally by the lower tribunals, will be enough to occupy fully the attention of the Sudder Court.

6. The question then that arises upon the suggestions of the Allahabad Judges is, whether it is advisable to depart from the principle, which is consented to by all who have expressed opinions on the subject; viz. that the final decision upon points of law should always be passed by the sudder courts, and that such decision should be passed judicially, and never, as heretofore, extrajudicially upon occasional references touching cases partially reported, in order to admit of a greater latitude in the grounds of special appeal, with a view to the correction of alleged erroneous decisions upon the merits of cases which have already undergone examination by two courts in succession, as well as erroneous decisions upon the law applicable to them.

To government of Bengal, 19 Oct. 1840, p. 10.

7. It is the opinion of your Lordship in Council, in concurrence with that of the Sudder Court at Calcutta, and that which we have expressed, and in agreement with the principle of the existing law of the presidencies of Bengal and Madras *, that a "special appeal should be admitted only for the trial of some special point or points of law, and that in the trial of the appeal only that particular point should be investigated and decided."

8. The Allahabad Sudder Court propose, "that a special appeal shall be admitted whenever on a perusal of the decree of the lower court there may appear strong probable ground, from whatever cause, to presume a failure of justice," "with exception to suits for personal property below 150 rupees." The Honourable the Lieut.-governor considers this too vague and indefinite, and recommends that a special appeal shall be admitted when the decree appears to be "incompatible with the recorded evidence."

9. We are not disposed to question that a system which provided for the interposition of the highest, and therefore presumably the best qualified tribunal, whenever there should be occasion to remedy injustice in individual cases, arising from the misunderstanding or perversion of evidence by subordinate judicatories, as well as to correct errors and remove doubts as to the law, would be more perfect than one which confined the attention of its superior judges to the latter object. But such perfection we cannot look to as attainable under present circumstances, and we are decidedly of opinion that it is of infinitely more importance to provide effectually for a correct and uniform interpretation and administration of the laws in which the whole community are concerned, than, leaving the provision for that object incomplete, to open a second appeal whenever a party dissatisfied with the decree on the first, is able plausibly to impugn its statement of the facts proved, or otherwise to allege a failure of justice: we say to open a second appeal, for it appears to us that it will be the same in effect, since if objections to the decree on the first appeal are admitted upon such grounds, we do not see how their relevancy and weight can be judged of without going into the case and examining the evidence with almost as much care and attention as would be sufficient for a decision upon an appeal.

10. We conceive that it is quite impossible from past experience under a law which limited the grounds of special appeal to points of law and usage, to form an estimate, likely to be even approximately correct, of the number of special appeals that would come before the courts if the grounds were enlarged as proposed, still less of the labour that would fall upon the judges by their being obliged, on the hearing of applications for special appeals upon the new grounds, to go into an examination of the proceedings and evidence to the extent that would be necessary. But we apprehend that the additional business would not be very much less than if a second appeal were allowed regularly as a matter of course.

11. Assuming then that it is not possible to combine the object which we deem secondary with that which we consider to be of the first importance, we think it clearly advisable to forego the former and give all attention to making our arrangements complete for the accomplishment of the latter. For this end we recommend, as the basis of a general law, that special appeals shall be heard

* By the Bombay Code, a special appeal is admissible "if strong probable grounds of grievance exist, from whatever cause." Reg. IV. of 1827, s. 99.

heard and determined only by the highest courts of the several presidencies, and that such appeals shall never be admitted but for the determination of some point of law, or of usage having the force of law, or of judicial practice.

12. These terms will include questions touching the rejection or admission of evidence, and the legal effect of the evidence admitted, and touching the settlement of the issues and the consequent shaping of the evidence; and we are of opinion that the irregular rejection or admission of evidence, mistakes as to the legal effect of evidence, and in the settlement of the issues, and consequent misdirection as to the evidence to be adduced, ought to be admitted as good grounds for a special appeal, as well as ignorance or misconstruction of the law or usage applicable to the case.

13. But in order that questions as to the legal effect of evidence may be fairly raised for the decision of the superior appellate court, it will be necessary that the courts below shall distinctly state in their decrees the words or facts proved to which a certain legal effect is attributed, and generally it will be a point of the first importance that the decrees shall be drawn up with the most careful attention to accuracy and precision.

14. To promote this object, we think it extremely desirable, that in cases decided by the zillah judges, the judgment and the grounds of it should be written in English, to be translated of course into the vernacular language. We are of opinion, that a rule to this effect would greatly conduce to exactness in the judgments, the reasoning, we conceive, would be more strict and pointed, and the conclusions more determinate, while there would be less room for dispute or cavil upon them for ambiguity of expression.

15. We understand that a manifest and striking improvement in these points ensued from the enactment of Regulation XV. of 1816 of the Madras Code, by which all the courts under English judges were directed to use the English language in their decrees.

16. It has always been our intention to recommend this measure for the presidencies of Bengal and Bombay also, and we think it proper to do so on this occasion with a view to facilitate the operation of the general law for special appeals which we now propose.

17. Adverting to the draft Act for the Bengal presidency, published on the 19th July, we observe that it provides for a second or special appeal to the Sudder Dewanny Adawlut, "from all decisions passed on regular appeals," if the judgment "be inconsistent with some established judicial precedent, or involve some question of law, usage, or practice, upon which there may exist reasonable doubts;" and directs that the judge admitting an application for a special appeal, shall reduce the point or points to be determined to writing, in the form of a certificate, and that the Court of Sudder Adawlut shall try and determine the point or points so certified, and no other point or part of the case.

Section 1.

Section 4.

Section 5.

Section 6.

18. But with reference to a practical objection raised by the Sudder Court at Calcutta, and with a view to prevent the chief courts of appeal from being overcharged with new business, recourse has been had to the expedient of vesting the zillah and the city judges with the power of determining upon the admission or rejection of applications for special appeals, in all cases in which the decisions complained of shall have been passed by subordinate judges, leaving only applications for special appeals from the decisions of zillah and city judges to be determined upon by a judge of the Sudder Court.

From register Sudder Dewanny Adawlut, Calcutta

19. We apprehend that there is no question, in any quarter, that the measure would be more perfect, if it provided for application for special appeals, in all cases, being determined only by a judge of the Sudder Court. This is our decided opinion; and we cannot but think that the proposed Act is likely, in a considerable degree, to fail in its purpose of bringing about uniformity of decision on points of law and usage, by leaving to the several zillah and city judges, in so many cases, to determine, independently and finally, what are settled points, and what are unsettled and disputable.

20. By the provision in question it appears to us that not a very great deal of labour will be saved to the sudder courts. It is stated that the number of petitions for special appeals disposed of in 1839 by the zillah judges subject to the Calcutta Court, was 1,238; the number of special appeals heard and determined by them was 748. It would not, we conceive, materially increase the labour of the court which had to decide upon a special appeal, if it had to determine

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determine upon the admission of it in the first instance, as the judge who heard the application would probably proceed to pass the final decision himself, if it were within the competency of a single judge, or would join in the decision, and so the attention given to the case at first would not be lost. What would be entirely saved, is the labour of hearing the rejected petitions.

21. We submit the draft of an Act which has been prepared from the published draft, with the modifications necessary to adapt it to our views, and which we would recommend to be enacted for all the presidencies.

22. We are not insensible of the importance of the points adverted to in paragraphs 10 to 14 of the letter from the Allahabad Sudder Court, with reference to the superintendence and control of the zillah and subordinate judges in the performance of their judicial functions. But it is to be observed, that the province of the sudder courts as controlling boards is apart and distinct from their jurisdiction in appeal, and is by no means confined within the same limits; and where a judge finds no ground for a special appeal, he may, however, call for the proceedings of the lower courts when it appears to him that there has been a want of care and diligence, or that some irregularity has been committed in the investigation of the case, either on the original trial or on the appeal, and may proceed to bring the matter before the court, in order that the functionary whose conduct he considers censurable may be admonished, or that a report may be made to Government, according to the existing Regulations. The object of providing efficient means for the superintendence and control of the provincial judicatories generally, is one to which we shall give particular attention in framing our general scheme of judicature and procedure.

Reg. II. 1801, s. 7.
Reg. V. 1803, s. 38.
Madras Reg. VI. 1802, sec. 39.

23. We proceed to submit to your Lordship in Council the following suggestions, tending to uniformity of procedure, which have occurred to us on the review we have taken on this occasion of the rules prevailing in the several presidencies.

24. By the Regulations of the Bombay Code a second appeal is allowed of course in all cases decided on the first appeal by assistant judges of sudder stations*, within certain limitations, to the zillah judge, and beyond them to the Sudder Dewanny Adawlut; and in all cases decided on the first appeal by assistant judges at detached stations, when the judgment confirms a decree for more than 1,000 rupees, or reverses or alters one for more than 500 rupees, the appeal lying to the Sudder Dewanny Adawlut or to the zillah judge, as the amount involved in the suit may exceed or fall short of 5,000 rupees, and to the Sudder Dewanny Adawlut in all cases decided on the first appeal by zillah judges, when the judgment reverses that of an assistant judge or confirms it for an amount exceeding 5,000 rupees.

25. We would recommend that the present opportunity be taken to make the law of the Bombay presidency conformable in this respect to those of Bengal and Madras, permitting only a special appeal, as above recommended, to the Sudder Dewanny Adawlut in the cases in which a second appeal now lies either to that court or to the zillah court. We would, however, accompany this provision with another restraining the zillah judge from referring appeals from principal sudder ameens to assistant judges. It does not appear to us to be fitting to subject the decision of the judges vested with the highest original jurisdiction to the revision and final judgment of any but the highest provincial tribunal.

26. By the Bombay Code the only suits in which zillah judges now have original jurisdiction, are those which fall under Sections 22 and 43 of Regulation III. 1827, but they are authorised to refer such suits to their assistants, and in practice, it appears †, all are so referred. We are of opinion that it is unnecessary to continue this sole remainder of original jurisdiction to the zillah judges. We would recommend that it be transferred entirely to the senior assistant judge at both the sudder stations and at the detached stations.

27. In

* Within 2,000 rupees if the decree confirm that of the lower court; within 1,000 rupees if it reverse it.

N.B. By Sec. 2, Reg. VII. 1831, any appeal from a native commissioner, preferred to a zillah judge, may be referred to an assistant judge, and the original jurisdiction of the first class of native commissioners, now called principal sudder ameens, is unlimited.

† On reference to the returns of 1838, we find that of the few original suits decided by European judicial officers (84 altogether), none were decided by the zillah judges.

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27. In our plan for the abolition of the provincial courts in the Madras presidency, upon the principle of making no change not required for the accomplishment of the special object in view, we proposed that the original jurisdiction now exercised by those courts should be transferred with their other functions to the judges of the zillah courts. We had it in contemplation, however, to propose eventually, that these courts should be entirely relieved from original jurisdiction, and from the further consideration we have given to the subject on this occasion, we deem it advisable that it should be done immediately. We now recommend, therefore, that in the enactment to be made for the reform of the Madras courts, it be provided that all original suits now cognizable by the provincial courts be in future cognizable by the assistant judges and principal sudder ameens of the subordinate zillah courts, instead of the zillah judges.

28. By the Bengal Code zillah judges are still vested with original jurisdiction, and the principal sudder ameens and sudder ameens are competent only to try suits filed in the zillah courts, and referred to them by the zillah judges. But it is not intended that the zillah judges shall commonly exercise original jurisdiction, and when they retain any original suits on their own files, they are required to record their reasons for so doing specially.

Reg. V. 1831; sec. 24, Act XXV. 1837. Circular Order, 23 Feb. 1838.

29. We would recommend that the intention of Government, expressed in paragraph 2d of Mr. Secretary M'Sween's letter, dated 26th August 1833, be now carried into effect by the enactment of the provisions proposed in Sections 41 and 42, Part II., of the Code of Regulations proposed by Mr. Millett, omitting the special limitation in Section 42, agreeably to Section 1, Act XXV. of 1837. By the proposed enactment the zillah judges will be relieved entirely from original jurisdiction, as we have recommended with respect to Madras and Bombay.

To the Sudder Dewanny Adawlut, Calcutta.

30. The general principle of our scheme for the Madras Courts vests the zillah judges with jurisdiction in regular appeals from the decrees of the assistant judges and principal sudder ameens of the subordinate zillah courts in all cases tried by them originally. But there is an objection to following it out entirely in the proposed transfer of the original jurisdiction of the provincial courts to those subordinate judges in suits above 5,000 rupees. With reference to the jurisdiction of the Privy Council, we would recommend, therefore, that in all cases in which the subject of action is of a value amounting to 10,000 rupees, and therefore liable to the jurisdiction of the Privy Council, the regular appeal shall be to the Sudder Adawlut, and to the zillah judge in all cases in which the value at issue is less than that sum.

31. By Act XXV. of 1837, in the territories subject to the Bengal presidency, appeals in original suits tried by the principal sudder ameens, when the value at issue exceeds 5,000 rupees, must be preferred to the Sudder Dewanny Adawlut. We are of opinion that the appeal should lie to the Sudder Dewanny Adawlut in cases in which the value amounts to 10,000 rupees, for the reason above stated. In suits for a less value we would give the jurisdiction on appeal to the zillah judge, and we recommend that the said Act be modified accordingly.

32. Upon the same principle we would recommend that in suits for a value amounting to 10,000 rupees, tried and decided by principal sudder ameens in the Bombay presidency, the regular appeal shall lie to the Sudder Dewanny Adawlut, and not to the zillah judge.

33. The measures above proposed will render the laws of all the presidencies uniform in some very important points, and put them as nearly on the footing on which we think they should stand permanently, as present circumstances seem to admit of, and so considerable a relief * will be afforded to the sudder courts of Calcutta and Allahabad, that their adoption, it may be hoped, will enable the judges as they stand at present to compass the hearing of all applications for special appeals, as well as the decision of all special appeals admitted.

34. We have followed the printed draft in treating of special appeals in regular

* The number of regular appeals preferred in 1829 to the Sudder Dewanny Adawlut at Calcutta, was 177, of which, by much the greater part, it may be assumed, would no longer lie to that court. The number of regular appeals received in the Allahabad Sudder Courts, in seven months, from January to July of the current year, was 65, being in the proportion of about 108 per annum.

(C.) No. V.
Special Appeals.

regular suits only on this occasion, but we observe that it has been the practice hitherto to admit special appeals likewise in miscellaneous cases. If the proposed rules are approved, we shall submit our opinion on the expediency of extending them to such cases.

35. The subject of this report has an intimate connexion with that of the Colleges of Justice, recommended in our report of the 31st October 1840. We shall report upon the establishment and organization of those institutions as soon as we have completed our report upon judicature in the presidencies. In the meantime we wish it to be understood that the recommendations we have now made respecting the Courts of Sudder Dewanny Adawlut will probably receive important modifications when we are engaged in devising rules for those more powerful tribunals, which will consist of the Judges of the Supreme Court and of the Sudder Dewanny Adawlut associated together.

We submit this our report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
4 December 1841.

DRAFT (A).

IT is hereby enacted, that from and after a special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, to the Court of Sudder Adawlut at Madras, and to the Court of Sudder Dewanny Adawlut at Bombay, from all decisions passed on regular appeals in the civil courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice upon which there may be reasonable doubts.

2. And it is hereby enacted, that applications for special appeals shall not be admitted, unless they are presented to the proper court as aforesaid within the period limited for the presentation of regular appeals.

3. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case.

4. And it is hereby enacted, that every application for a special appeal duly presented to the proper court as aforesaid, shall be heard by a single judge of the court in the presence of the special appellant, or his vakeel, or agent, and it shall be competent to the judge at his discretion to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.

5. And it is hereby enacted, that if it shall appear to the judge that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall at the same time reduce the point or points to be determined to writing, in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court, and the special appeal shall then be brought on the file of the court, to be heard and determined in due course.

6. And it is hereby enacted, that if it shall appear to the judge that a special appeal is not admissible under this Act, he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.

7. And it is hereby enacted, that in every case of special appeal admitted as aforesaid, the Court of Sudder Dewanny Adawlut shall determine the point or points, certified as above enacted, and no other point or part of the case whatever.

8. Provided, that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate.

9. And it is hereby declared, that the existing laws and regulations of the presidencies of Bengal, Madras, and Bombay, relating to special appeals, shall continue

continue in force so far as they are not inconsistent with the provisions of this Act.

10. And it is hereby enacted, that nothing contained in this Act shall affect the hearing of second or special appeals which shall have been admitted and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be heard and decided in the same manner as if this Act had not passed.

(signed) *J. C. C. Sutherland*, Secretary.

Legis. Cons. 20 Dec. 1841. No. 23.

Fort William, Legislative Department, the 20th December 1841.

The following extract from the proceedings of the Right hon. the Governor-general of India in Council, in the Legislative Department, under date the 20th December 1841, is published for general information:—

Read a second time the draft of a proposed Act, dated the 19th of July 1841, and published in the Calcutta Gazette of the 21st of the same month, for amending the rules of special appeals.

Resolution.—The Right hon. the Governor-general in Council resolves that the following amended draft on the subject be re-published for general information:—

Act No. —— of 1841.

An Act for Amending the Rules of Special Appeals.

1. It is hereby enacted, that from and after the a special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, to the Court of Sudder Adawlut at Madras, and to the Court of Sudder Dewanny Adawlut at Bombay, from all decisions passed on regular appeals in the civil courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice upon which there may be reasonable doubts.

2. And it is hereby enacted, that applications for special appeals shall not be admitted unless they are presented to the proper court as aforesaid within the period limited for the presentation of regular appeals.

3. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case.

4. And it is hereby enacted, that every application for a special appeal duly presented to the proper court as aforesaid, shall be heard by a single judge of the court in the presence of the special appellant, or his vakeel, or agent; and it shall be competent to the judge, at his discretion, to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.

5. And it is hereby enacted, that if it shall appear to the judge that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall at the same time reduce the point or points to be determined to writing, in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court, and the special appeal shall then be brought on the file of the court, to be heard and determined in due course.

6. And it is hereby enacted, that if it shall appear to the judge that a special appeal is not admissible under this Act, he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.

7. And it is hereby enacted, that in every case of special appeal admitted as aforesaid, the Court of Sudder Dewanny Adawlut shall determine the point or points, certified as above enacted, and no other point or part of the case whatever.

8. Provided, that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate.

9. And it is hereby declared, that the existing laws and regulations of the presidencies of Bengal, Madras, and Bombay, relating to special appeals, shall continue in force so far as they are not inconsistent with the provisions of this Act.

 10. And

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Special Appeals.

10. And it is hereby enacted, that nothing contained in this Act shall affect the hearing of second or special appeals which shall have been admitted and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be heard and decided in the same manner as if this Act had not passed.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 20th day of March next.

(signed) *T. H. Maddock*,
Secy to the Govt of India.

From *T. H. Maddock*, Esq. Secretary to the Government of India.

Legis. Cons.
20 Dec. 1841.
No. 24.

To Chief Secretaries, Governments of Fort St. George (No. 194) and Bombay (No. 195), and Officiating Secretary, Government of North Western Provinces (No. 196).

Sir,
I am directed—

I have, &c.

Fort William,
20 December 1841.

(No. 157.)

To *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

With reference to your letter (No. 370) dated the 7th September last, with its enclosures, I am directed to transmit to you, for submission to the Right hon. the Governor of Bengal, the accompanying amended draft of a proposed Act for amending the rules of special appeals, this day read in Council, for any observation his Lordship may feel disposed to offer on its provisions in communication with the Judges of the Supreme Court.

The original enclosure received with your letter is herewith returned.

I have, &c.
(signed) *T. H. Maddock*,
Secy to the Govt of India.

(True copies.)

East India House,
6 April 1842.

T. L. PEACOCK,
Examiner of India Correspondence.

INDIAN LAW COMMISSION.

COPIES

OF THE

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

[*Presented to Parliament in pursuance of the Act 3 & 4 Will. IV. c. 85, s. 54.*]

East India House,
26 May 1843.

JAMES C. MELVILL.

Ordered, by The House of Commons, *to be Printed,*
30 *May* 1843.

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2	48	8 Feb. —	- - Abolishing the Recorder's Court in the Straits.	22 April 1842 (No. 18)	reported - -	- - Des. No. 32, dated 30 December 1842.
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East India House,
26 May 1843.

T. L. Peacock,
Examiner of India Correspondence.

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

— No. 1. —

PROPOSED ACT FOR AMENDING THE LAW REGARDING THE LIMITATION OF SUITS.

No. 1.
Act for amending the Law regarding the Limitation of Suits.

(No. 319.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Legis. Cons. 5 April 1841. No. 11.

Sir,

I AM directed by the Right honourable the Governor of Bengal to forward, for the consideration and orders of the Right honourable the Governor-general in Council, a letter from the register of the Sudder Dewany Adawlut, No. 436, of the 22d January last, with enclosures, on the subject of the law of limitation of time in respect to the bringing of suits for real and personal property, and in respect to the execution of decrees. With these papers is also forwarded an extract* from the Resolution of the Governor of Bengal on the same subject, which is alluded to in the enclosures above noted.

Judicial Dep.

* Paras. 39 to 42.

2. The Governor of Bengal is of opinion that the existing laws on this subject require amendment of the kind now proposed, and further, that the draft Acts submitted by the Court may be made the basis of useful legislation.

3. His Lordship directs me, however, to remark, that he is disposed to doubt the necessity for any distinction, or at all events so wide a distinction as is now observed, in respect to limitation of time, between suits for real and suits for personal property, and that he does not see any reason for allowing, as is done in Mr. Smyth's draft, two sorts of terms, the first general and the second special.

4. For instance, in suits for personal property, Mr. Smyth's proposition is, to fix six years as the limit in the first place, but afterwards, on cause shown, to grant four years more; after 10 years he proposes to bar them altogether.

5. The Governor thinks that the term, whatever it be, should be fixed once for all, and that after the expiration of the term fixed, no cause shown should avail to procure admission for a suit.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
2 March 1841.

Extract from a Resolution of the Government of Bengal in the Judicial Department, under date the 1st of December 1840.

39. The Governor is aware that the constant attention of the Court is given to this subject, and it is doubtless one which fully deserves all the attention they can give it. His Lordship is, however, of opinion that some improvement might be obtained from limiting the period within which execution may be applied for. There is, apparently, no reason for allowing, as is now done, many years to elapse between an award and the application for its execution, especially as every day's

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delay is sure to make execution more difficult, by removing proofs and witnesses, and adding to the complication of circumstances. One year from the date of the decree appears amply sufficient for all purposes for which delay can be needed; and it may be surmised that a man who does not sue out execution within that term has usually no such good reason for his delay as would, in ordinary cases, countervail the evil it occasions. At the expiration of a year he who had not sued out execution might be refused it, unless after a suit to revive execution, and after a further term even greater difficulties might be opposed to him. Eventually a time should be fixed, after which the courts should presume the decree satisfied, and refuse to interfere. At present, not to speak of land cases, which may be delayed for 59 years, a creditor may leave his debt 12 years unsued for, and after suing and obtaining a tardy decree, may sue out execution after the expiration of more than 12 years more.

40. It is no wonder his Lordship thinks that under such a law execution of decrees should be proverbially difficult, and so often indeed impossible.

41. In reporting their opinion upon this point, the Court are requested at the same time to state their view of the general law of limitation, which is in many respects open to objection.

42. In some districts, where the quantity of work of that description admitted of such a measure, it might be found advantageous to employ a principal sudder ameen entirely in executing decrees, until at least the existing arrear were brought down. Upon this suggestion also the Court's opinion is requested.

(A true Extract.)

(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

(No. 436.)

Legis. Cons. 5 April 1841. No. 12. Enclosure.

From *J. Hawkins*, Esq. Register, Fort William, to *F. J. Halliday*, Esq. Secretary to Government in the Judicial Department.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges; and J. F. M. Reid, Esq. Temporary Judge.

With reference to the observations of the Right honourable the Governor (in his Resolution on the Civil Report for 1839) regarding the tardy execution of decrees, I am directed by the Court to request you will lay before his Lordship copy of a Minute by Mr. D. C. Smyth, and drafts of two Acts, intended respectively to limit the period within which claims to property should be preferred and execution of decrees sued out, which appear to them calculated to remedy the inconveniences noticed.

2. The Court have communicated to the civil judges (in a circular, dated the 15th instant,) the sentiments of the Governor regarding the disposal of old suits.

3. The other suggestions of his Lordship contained in that Resolution will receive due attention from the Court.

I have, &c.
(signed) *J. Hawkins,*
Register.

Fort William,
22 January 1841.

Note by Mr. *Carmichael Smyth.*

I beg leave to lay before the Court two draft Acts, prepared by me, with reference to the suggestion contained in the Government Resolution of the 1st December last.

The first relates to the law of limitation; a subject that I brought before this Court more than 10 years ago, when judge of the district of Hooghly. I then advocated the necessity of reducing the period within which suits should be instituted for the recovery of money and other personal property to six years, and my more mature judgment and experience satisfies me that this alteration of the law is indispensably necessary. I am also perfectly satisfied that some further limitation must be placed on the period within which suits for land or other immoveable property may be instituted. At present, as very truly stated in the Government Resolution, a suit for land may be delayed for 59 years, it may also be pending in the courts four

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four or five years, and when finally decided the decree may again remain unexecuted for 12 years more; so that the party cast may have to account for mesne profits for 76 years! The draft Act would alter the law as follows:—

1. Suits for personal property to be instituted within six years after the cause of action shall have arisen.

2. On showing sufficient cause, such suits may be heard within the period of 10 years.

3. After 10 years no suit for personal property to be entertained, on any plea whatever.

4. Suits for immoveable property to be instituted within 12 years after the cause of action shall have arisen.

5. On showing sufficient cause, such suits may be heard within the period of 20 years.

6. After 20 years no suits for immoveable property to be entertained, on any plea whatever.

The second draft Act relates to the execution of decrees, and I would follow the law of England on this subject.

I would not allow execution to be taken out after a year, unless upon a suit "to revive execution." After the expiration of 12 months, the decree holders should therefore be obliged to proceed, regularly, not summarily; we should then really know what business the courts had before them. At present, issues of the greatest interest to the parties are either disposed of with all the haste and expedition of a summary investigation, or else they lie dormant in the decree,* (juree sherista) with a mass of other undisposed of cases, and are never brought to a satisfactory termination. Believing, therefore, as I do most sincerely, that an alteration of the law on this subject is urgently called for, and agreeing entirely in the remarks contained in the Government Resolution, I would send these two drafts up and press an early consideration of this subject.

(signed) *D. C. Smyth.*

Draft of Act relating to Law of Limitation.

1. Be it enacted, that the several courts of judicature are prohibited from hearing, trying, or determining the merits of any suit for the recovery of money or other personal property, against any person or persons, if the cause of action shall have arisen six years before any suit shall have been commenced on account of it, unless the complainant can show, by clear and positive proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money, or that he directly preferred his claim within that period to a court of competent jurisdiction to try the demand, and shall assign satisfactory reasons to the court why he did not proceed in the suit, or shall prove that, either from minority or other good and sufficient cause, he had been precluded from obtaining redress.

2. And be it enacted, that no suit for the recovery of money or other personal property shall be cognizable in any court of justice, on any plea whatever, if the cause of action shall have arisen 10 years before the institution of such suit.

3. And be it enacted, that the provisions of Section 14, Regulation III. 1793, are declared applicable solely to private claims of right to lands, houses, or other permanent property.

4. And be it enacted, that no suit for the recovery of lands, houses, or other immoveable property shall be cognizable in any court of justice if the cause of action shall have arisen 20 years before the institution of such suit; nor shall any plea on the part of the plaintiff, for the non-prosecution of his claim after the lapse of such period, be deemed a sufficient ground for taking judicial cognizance of any suit so preferred.

5. Provided always, and be it enacted, that all suits that may be now pending, or that may be instituted within the period of three years from the of 1841, shall be heard, tried, and determined in the same way that they might have been at any time before the passing of this Act, anything therein contained to the contrary notwithstanding.

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* The office for executing decrees.

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Act for amending the Law regarding the Limitation of Suits.

Draft of Act relating to Execution of Decrees.

1. Be it enacted, that no decree of a civil court of judicature shall be executed summarily, in the manner now prescribed by the Regulations, unless application for the same shall be preferred within the period of one year from the date on which the decree may have been passed.

2. And be it enacted, that every application for the execution of a decree of a civil court of judicature, preferred after the expiration of the period above mentioned, shall be considered as a suit instituted to revive execution of the same, and shall be subject to the rules enacted by Regulation IV. 1793, and the other Regulations in force for receiving, trying, and deciding suits or complaints declared cognizable by the civil courts of judicature; and to the several stamp duties prescribed by Clause 8, Schedule (B.), Regulation X. 1829, on the institution of suits and appeals in those courts.

3. And be it enacted, that, in the trial of such suit, the defendant shall not be at liberty to impugn the merits of the original judgment; but he may show that the matter in dispute has been adjusted subsequent to the date of the original judgment or decree.

4. And be it enacted, that the civil courts of judicature are prohibited from hearing, trying, or determining any suit instituted to revive execution of a decree, unless the same shall be preferred within the period of six years from the date on which the decree may have been passed; nor shall any plea whatever on the part of the decree holder, for the non-execution of the decree after the lapse of such period, be deemed a sufficient ground for taking cognizance of any suit so instituted.

5. Provided always, and be it enacted, that all applications for the execution of decrees that may be now pending, or that may be preferred within the period of one year from the of 1841, shall be executed summarily, and in the same way that they might have been at any time before the passing of this Act, anything therein contained to the contrary notwithstanding.

(signed) *J. Hawkins*, Register.

Legis. Cons. 5 April 1841. No. 13.
Limitations of Suits.

Minute by the Honourable *A. Amos*, Esq. dated the 23d March 1841.

I have prepared this draft Act for the "limitation of suits," which comprises the subject of Mr. Smyth's two drafts; but it is more extensive in its operation, and is more enlarged, and it presents considerable modification of Mr. Smyth's proposed clauses. I offer this, however, chiefly as a scheme for a general Act on the subject, which, after publication, will no doubt elicit various suggestions from the supreme and mofussil courts and the Law Commission. I thought it more desirable to take these means for obtaining such suggestions at the earliest moment, rather than to consume time in elaborating the details of the Act according to my own notions.

The supreme courts are considerably behind the modern amendments in the English statutes of limitations. I have endeavoured to give them the English law of the present day in the first section of the draft. The judges of the supreme courts may properly be requested to offer suggestions upon this subject, if any occur to them.

I was very desirous, in furtherance of the design of the Legislature in the Charter Act, to have taken this opportunity for proposing one general law of limitations for all persons and places in India. But the judges here think that this would be very inexpedient, unless we were prepared to make very extensive alterations in the substantive law as administered by the supreme courts. We are certainly not in a condition to make very organic changes at the present moment in the substantive law as administered in the supreme courts; though, as will be seen in the Report of the Law Commission on the subject of the *lex loci*, some essential changes in the English substantive law are proposed as concerns British subjects and others resident in the mofussil. I am afraid we must just now admit our present inability to rectify the anomaly, that a man shall be safe in the possession of immoveable property against private claims after 12 years in the mofussil, whilst in Calcutta it must continue to require 20 at least.

Notwithstanding

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Act for amending the Law regarding the Limitation of Suits.

Notwithstanding this want of uniformity, the draft Act accomplishes a considerable object in the way of uniformity, by enacting one rule for the three presidencies, and obviating the reference to three separate codes. It also comprises several regulations and isolated parts of regulations in the different codes, thereby affording much benefit from the process of consolidation.

I have introduced several clauses borrowed from provisions of English law, sometimes with slight modifications, which may tend to make the two systems approximate more nearly to each other, and at the same time give greater certainty to the practice of the mofussil courts. These clauses will, I trust, be carefully examined by the judges of those courts.

I have ventured materially to alter several of the provisions contained in the Regulations of the different presidencies. This has been done, with regard to the Bengal Code, to a considerable extent by Mr. Smyth, but I have gone further. It would make this Minute inconveniently long, were I to discuss the reasons for each alteration that I have made in the Regulations or in Mr. Smyth's draft. But I may observe generally, that the Regulations upon this subject contain several very lax provisions, and are sometimes expressed not in very precise terms.* I may observe further, that the sudder courts appear, in many instances, to have almost annihilated the efficacy of several rules in regard to limitations, by giving a very wide interpretation to the exceptions to those rules, availing themselves of the loose phraseology of the Regulations.†

I have taken this opportunity of imposing a limit of time for convictions before magistrates, which seems to be wanted.

I have derived great assistance from the suggestions of Mr. Millett with regard to this draft, and I send herewith his Note on the Madras and Bombay Regulations. He explained to me verbally the course of the Bengal Regulations and constructions, together with his own views on the subject. Thus this draft may be considered, in some measure, an anticipation of the labours of the Law Commission, and composed out of materials collected by them. The draft is, however, by no means in that finished state in which, after much more mature consideration than has been given to it, it would have been presented by the Law Commission.

(signed) *A. Amos.*

AN ACT for amending the Law with respect to the Limitation of Suits.

Legis. Cons. 5 April 1841. No. 14. Enclosure.

1. WHEREAS it is expedient to extend to Her Majesty's supreme courts within the territories of the East India Company various amendments recently made in the English statute law respecting the limitation of suits: and whereas it is also expedient to modify the law with respect to the limitation of suits as administered in the courts of the East India Company, and to consolidate various enactments upon that subject applicable to different presidencies: and whereas it is also expedient to enact some provisions for limiting the period of certain legal proceedings, with reference as well to the law of England as to the Regulations of the different presidencies: It is hereby enacted, that so much of the statutes 2 & 3 Will. 4, c. 71, 3 & 4 Will. 4, c. 42, 3 & 4 Will. 4, c. 27, as relates to the limitation of suits, and so much of the same as relates to forms of action abolished by those statutes, or any of them, shall be extended to Her Majesty's courts within the territories of the East India Company: provided always, that wherever in those statutes any period is limited with reference to the time of passing the same, the corresponding period in the present Act shall be six months from the time of passing thereof.

2. And it is hereby enacted, that the several courts of the East India Company are

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* *Ex. gr.* Reg. III. of 1793, "unless the complainant can show that the defendant admitted the truth of the demand, or promised to pay the money, or that he preferred his claim to a court of competent jurisdiction, or shall prove that either from minority, or other good and sufficient cause," he had been precluded from obtaining redress.

Reg. II. of 1805, s. 3, the limitation of 12 years shall not be applicable if the person in possession shall have acquired possession by "violence, fraud, or by any other unjust, dishonest means whatever."

† *Ex. gr.* Held by Sudder Court, that preferring claim to a court, which claim is nonsuited, takes a case out of the Regulation.

Depositing a document in a court held a "sufficient cause" for not enforcing a claim under it in another court.

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are prohibited from trying any suit other than for the recovery of immoveable property, or of some right derived from such property, or any suit for reviving a decree, as hereinafter mentioned, if the cause of action shall have arisen six years before the commencement of such suit.

3. And it is hereby enacted, that the courts of the East India Company aforesaid are prohibited from trying any suit for the recovery of immoveable property, or for any right derived out of such property, if the cause of action shall have arisen 12 years before the commencement of such suit.

4. And it is hereby enacted, that no decree of any civil court of the East India Company shall be executed summarily in the manner now prescribed by the Regulations, unless application for the same shall have been preferred within the period of one year from the date on which the decree may have been passed.

5. And it is hereby enacted, that every application for the execution of a decree of any such civil court as aforesaid, preferred after the expiration of one year from the time of passing thereof, shall be considered as a suit instituted to revive the execution of the same, and shall be subject to the rules enacted by Regulation IV. 1793, and the other Regulations in force for receiving, trying, and deciding suits declared cognizable by civil courts of judicature, and to the several stamp duties prescribed by Clause 8, Schedule (B.), Regulation X. of 1829, on the institution of suits and appeals in those courts: provided always, that no stamp duty or fees payable by the plaintiff in any such suit for reviving a decree shall in any case be recoverable from the defendant; and provided also, that in any such suit the defendant shall not be allowed to impugn the merits of the original decree.

5. And it is hereby enacted, that if any person shall at the time of the cause of action first accruing be under any of the disabilities of infancy, idiotcy, lunacy, or absence beyond seas, then such person, or the person claiming through him, may commence a suit in any such civil court as aforesaid, within three years after the person to whom the right shall have first accrued as aforesaid shall have ceased to be under any such disability, or shall have died (whichever shall have first happened): provided always that the disability by reason of absence beyond seas shall in no case be admissible beyond the period of 20 years.

6. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that when any person shall be under any of the disabilities aforesaid at the time when the cause of action first accrues, and such disability may have been removed, or the party may have died under such disability no further period for commencing a suit shall be allowed by reason of any disability of any other person.

7. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that in every case of a concealed fraud, the right to bring a suit shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might have been first known or discovered.

8. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that the cause of action for the recovery of immoveable property or rights derived therefrom shall be deemed to have first accrued when the claimant shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits or of rent, and shall while entitled thereto have been dispossessed or have discontinued such possession or receipt, then such cause of action shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; in other cases the cause of action shall be deemed to have first accrued when the claimant was first entitled to the possession of the estate or interest claimed: provided always, that no possession by a mortgagee or depositary, or any person claiming under them, shall be deemed adverse, so far as to bar the remedy of any claimant by reason of length of time, unless where the person claiming under any such mortgagee or depositary shall have held possession for the space of 12 years without recognising the title of the claimant, and shall have obtained possession under a title *bonâ fide* believed to have conveyed an absolute right of property.

9. And it is hereby provided, in regard to suits in such civil courts as aforesaid, that any acknowledgment in writing, and signed, shall preclude the person signing the same from pleading the aforesaid limitations against the party in whose favour such acknowledgment may have been given, except so far as relates to the lapse of time after the date of such acknowledgment, or the last of such acknowledgments.

Vide Sec. 6 & 7, Reg. II. of 1805.

10. And it is hereby enacted, that all suits for penal damages brought in any such

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such civil courts as aforesaid shall be preferred within one year after the cause of action shall have arisen, and that no period be allowed for disabilities in such cases.

11. And it is hereby enacted, that no conviction before any magistrate or justice of the peace for any offence punishable by fine, or by fine and imprisonment, shall be deemed valid, unless the offence shall have been committed within one year from the date of such conviction.

12. And it is hereby provided, that this Act shall not extend to any suits for the recovery of the public revenue, or for any public right or claim whatever.

13. And it is hereby provided, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined in the same way that they might have been at any time before the passing of this Act.

Fort William, Legislative Department, 5 April 1841.

Legis. Cons. 5 April 1841. No. 15.

The following Draft of a proposed Act was read in Council for the first time on the 5th of April 1841.

ACT No. ——— of 1841.

An Act for Amending the Law with respect to the Limitation of Suits and Summary Proceedings.

1. Whereas it is expedient to extend to Her Majesty's supreme courts within the territories of the East India Company various amendments recently made in the English statute law respecting the limitation of suits: and whereas it is also expedient to modify the law with respect to the limitation of suits as administered in the courts of the East India Company, and to consolidate various enactments upon that subject applicable to different presidencies: and whereas it is also expedient to enact some provisions for limiting the period of certain legal proceedings, with reference as well to the law of England as to the Regulations of the different presidencies;

It is hereby enacted, that so much of the statutes 2 & 3 Will. 4, c. 71, 3 & 4 Will. 4, c. 42; 3 & 4 Will. 4, c. 27, as relates to the limitation of suits, and so much of the same as relates to forms of action abolished by those statutes, or any of them, shall be extended to Her Majesty's courts within the territories of the East India Company: Provided always, that wherever in those statutes any period is limited with reference to the time of passing the same, the corresponding period in the present Act shall be six months from the time of passing thereof.

2. And it is hereby enacted, that the several courts of the East India Company are prohibited, except for special and sufficient reasons, to be stated on the face of the decree, from trying any suit other than for the recovery of immoveable property, or of some right derived from such property, or any suit for reviving a decree, as hereinafter mentioned, if the cause of action shall have arisen six years before the commencement of such suit.

3. And it is hereby enacted, that the courts of the East India Company aforesaid are prohibited from trying any suit for the recovery of immoveable property, or for any right derived out of such property, if the cause of action shall have arisen 12 years before the commencement of such suit.

4. And it is hereby enacted, that no decree of any civil court of the East India Company shall be executed summarily in the manner now prescribed by the Regulations, unless application for the same shall have been preferred within the period of one year from the date on which the decree may have been passed.

5. And it is hereby enacted, that every application for the execution of a decree of any such civil court as aforesaid, preferred after the expiration of one year from the time of passing thereof, shall be considered as a suit instituted to revive the execution of the same, and shall be subject to the rules enacted by Regulation IV. 1793, and the other Regulations in force for receiving, trying, and deciding suits declared cognizable by civil courts of judicature, and to the several stamp duties prescribed by Clause 8, Schedule (B.), Regulation X. of 1829, on the institution of suits and appeals in those courts: provided always, that no stamp duty or fees payable in any such suit for reviving a decree shall in any case be recoverable from the defendant;

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defendant; and provided also, that in any such suit the defendant shall not be allowed to impugn the merits of the original decree.

6. And it is hereby enacted, that if any person shall at the time of the cause of action first accruing be under any of the disabilities of infancy, idiotcy, lunacy, or absence beyond seas, then such person, or the person claiming through him, may commence a suit in any such civil court as aforesaid, within three years after the person to whom the right shall have first accrued as aforesaid shall have ceased to be under any such disability, or shall have died (whichever shall have first happened): provided always, that the disability by reason of absence beyond seas shall in no case be admissible beyond the period of 20 years.

7. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that when any person shall be under any of the disabilities aforesaid at the time when the cause of action first accrues, and such disability may have been removed, or the party may have died under such disability, no further period for commencing a suit shall be allowed by reason of any disability of any other person.

8. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that in every case of a concealed fraud, the right to bring a suit shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered.

9. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that the cause of action for the recovery of immoveable property, or rights derived therefrom, shall be deemed to have first accrued when the claimant shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits or of rent, and shall while entitled thereto have been dispossessed or have discontinued in such possession or receipt, then such cause of action shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; in other cases, the cause of action shall be deemed to have first accrued when the claimant was first entitled to the possession of the estate or interest claimed: provided always, that no possession by a mortgagee or depositary, or any person claiming under them, shall be deemed adverse so as to bar the remedy of any claimant by reason of length of time, unless where the person claiming under any such mortgagee or depositary shall have held possession for the space of 12 years, without recognising the title of the claimant, and shall have obtained possession under a title *bonâ fide* believed to have conveyed an absolute right of property.

10. And it is hereby provided, in regard to suits in such civil courts as aforesaid, that any acknowledgement in writing, and signed, shall preclude the person signing the same from pleading the aforesaid limitations against the party in whose favour such acknowledgment may have been given, except so far as relates to the lapse of time after the date of such acknowledgment, or the last of such acknowledgments.

11. And it is hereby enacted, that all suits for penal damages brought in any such civil courts as aforesaid, shall be preferred within one year after the cause of action shall have arisen, and that no period be allowed for disabilities in such cases.

12. And it is hereby enacted, that no conviction before any magistrate or justice of the peace for any offence punishable by fine, or by fine and imprisonment, shall be deemed valid, unless the offence shall have been committed within one year from the date of such conviction.

13. And it is hereby provided, that this Act shall not extend to any suits for the recovery of the public revenue, or for any public right or claim whatever.

14. And it is hereby provided, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined in the same way that they might have been at any time before the passing of this Act.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 5th day of July next.

(signed) *T. H. Maddock*,
Secretary to Government of India.

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From the Supreme Government to the Honourable the Judges of the Supreme Courts at Fort William, Madras, and Bombay, dated the 5th April 1841.

Legis. Cons. 5 April 1841. No. 16.

Legislative.

Honourable Sirs,

We have the honour to forward to you, for any observations or remarks which you may desire to offer, the accompanying printed copy of the draft of a proposed Act for amending the law with respect to the limitation of suits and summary proceedings, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette.

We have, &c.

(signed) *Auckland.* *W. Casement.*
W. W. Bird. *H. S. Prinsep.*

Fort William, 5 April 1841.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to Secretaries Governments of Bengal, Madras, Bombay, and North West Provinces.

Legis. Cons. 5 April 1841. No. 17.

Sir,

I am directed by the Right honourable the Governor-general in Council to transmit to you, for submission to the , the accompanying printed copy of the draft of a proposed Act for amending the law with respect to the limitation of suits and summary proceedings, this day read in Council for the first time, and published for general information, for any observation on its provisions which his *Lordship* in Council may be desirous to offer previous to its final enactment into law.

Legislative.

Honor.

I have, &c.

(signed) *T. H. Maddock,*
Secy to the Govt of India.

Fort William, 5 April 1841.

(No. 65.)

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 5 April 1841. No. 17 A.

Sir,

By direction of the Right honourable the Governor-general in Council, I transmit to you, for submission to the Law Commissioners, the accompanying copies of papers noted in the margin, on the subject of the draft Act (also forwarded herewith) this day read in Council for the first time, for amending the law with respect to the limitation of suits and summary proceedings, and have to request that if any suggestions or modifications should occur to the Commissioners on its provisions, they may be communicated for the information of his Lordship in Council, before the expiration of the period fixed for its reconsideration.

Letter from Secretary Government of Bengal, dated 2 March 1841, No. 319, with Enclosure.
Minute by the Hon. A. Amos, Esq. dated 23 March 1841, with Enclosure.

I have, &c.

(signed) *F. J. Halliday,*
Junr Secy to Govt of India.

Council Chamber, 5 April 1841.

From the Honourable the Judges of the Supreme Court at Madras to the Right honourable the Earl of *Auckland*, G. C. B. Governor-general of India in Council, &c. &c. &c., dated the 27th April 1841.

Legis. Cons. 12 July 1841. No. 30.

My Lord,

We have the honour to acknowledge the receipt of your Lordship's letter of the 5th instant, enclosing a printed copy of the draft of a proposed Act with respect to the limitation of suits and summary proceedings, for which we beg to return our thanks to your Lordship, and at the same time to state that we have no observations to offer thereupon.

We have, &c.

(signed) *Robert Comyn.*
Edwd. J. Gambier.

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From the Honourable Sir *E. Perry*, Knt., Puisne Judge, Bombay, to the Right honourable the Governor-general in Council, &c. &c. &c.

Legis. Cons. 12 July 1841. No. 31.

My Lord and Honourable Sirs,

I HAVE the honour to acknowledge the receipt of your letter of the 5th of April last, enclosing a printed copy of the draft of a proposed Act for the limitation of suits, and I am requested by his Lordship the Chief Justice of this presidency to state that we concur in the expediency of such a measure being passed, and that we have no remarks to offer on the terms of the Act proposed.

I have, &c.

Bombay, 4 May 1841. (signed) *E. Perry.*

(No. 1514, of 1841.—Judicial Department.)

Legis. Cons. 12 July 1841. No. 32.

From *J. P. Willoughby*, Esq. Secretary to Government of Bombay, to *T. H. Maddock*, Esq. Secretary to the Government of India, in the Legislative Department.

Sir,

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 5th of April last, No. 43, with its enclosure, and to transmit to you, for the purpose of being laid before the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the deputy-register of the Sudder Foujdaree Adalut, dated 28th ultimo, communicating the opinion of the judges of that court in regard to the proposed Act for amending the law with respect to the limitation of suits and summary proceedings.

I have, &c.

(signed) *J. P. Willoughby,*

Bombay Castle, 2 June 1841. Secretary to Government.

Legis. Cons. 12 July 1841. No. 33. Enclosure.

(No. 993, of 1841.)

From *W. H. Harrison*, Esq. Deputy-Register, Bombay, to *J. P. Willoughby*, Esq. Secretary to Government, Judicial Department.

Sir,

Messrs. Marriott, Bell, and Giberne.

I AM directed to acknowledge the receipt of your letter, dated 24th ultimo, transmitting copy of a letter from the Secretary to Government of India in the Legislative Department, and of a draft Act therein referred to, for amending the law in respect to the limitation of suits and summary proceedings, and requesting the judges to submit their opinions and suggestions upon the provisions of the latter, and in reply to forward to you the accompanying observations of the court on the several clauses of the Act.

Clause 2, the judges observe, does not except actions for penal damages which, by clause 11 of this Act, shall be preferred within one year; nor does it except the provisions of clause 10. These points are all more clearly provided for in the Bombay Code. Hereditary offices, such as those of patells coolkurnies, district zemindars, &c., and which are regarded in this country as even more valuable, and are more highly prized than immoveable property, are not excepted from the provisions of clause 2. This the judges consider particularly objectionable, and as contrary to the peculiar habits and feelings of the native community. Sections 1, 2, 3, 4, of Regulation V. of 1827, of the Bombay Code, are in their opinion far preferable to the provisions of both this and the next or 3d clause of the proposed Act.

Clause 4, Mr. Marriott considers to be a judicious law, and on 5 that gentleman observes, that to make this section applicable to the Bombay Code, the following should be added after the word "rules," in the sixth line, for the trial of the "original suits," and the remaining part of the section should be omitted as far as "defendant" in the last line but two.

Mr. Giberne, on clause 4 and 5, considers the practice of our courts preferable

to

to the provisions of these two clauses. By a circular from the Suder Dewanee Adawlut it was ruled that no decision should be summarily executed after the expiration of one year from its date, without first calling upon the opposite party to state his objections, if he had any to offer; it then rested with the judge to admit or reject those objections, referring in the latter case, the applicant to procedure by action; or if no objection existed, directing the execution of the decree, by which procedure the parties are spared additional expense and trouble, and the debtor is often less liable to be pressed for immediate payment, most probably saved from the claim of further interest, which is limited by Regulation to the date of the decree in the first instance, but which would doubtless be demanded beyond that date. It must be allowed, in the event of a fresh action, moreover, a decree is now declared, subject to the provisions of Sect. 4 of Regulation V. of 1827, of the Bombay Code.

Clause 6. Mr Giberne considers the provisions of the Bombay Regulations in Clauses 3 and 4 of Sect. 8 of Regulation V. of 1827, more equitable; the term "beyond seas," can hardly apply in the present day to natives of this country, who, nevertheless, are frequently obliged to absent themselves for many years in distant lands of this peninsula; and the 7th clause of this Act is, that gentleman thinks, unjust to the heirs of the person referred to: the provisions in the above quoted section are more just.

Clause 8, Mr. Giberne remarks, appears sufficiently provided for in Clause 2 of Sect. 1 of Regulation V. of 1827.

The judges are of opinion, on clause 9, that the provisions of this clause are far inferior to the law of the Bombay Code, and particularly on the subject of mortgage, which is herein rather obscure. If understood correctly, it is intended that no length of time shall be a bar to the rightful owner claiming his property from his mortgage, but he cannot claim it from a party holding the property under such mortgage; that is, after a purchaser has held possession for 12 years, believing his right and title thereunto absolute and undoubted. It appears to the court that this clause and clause 8 may often run counter to each other in the same case; by way of illustration: suppose *A* mortgages his property (house and lands) to *B*, and goes to a distant country, *B* immediately sells it to *C*; *C* holds it for upwards of 12 years, recognising no other claimant, and believing that he had obtained an absolute right of property. *A* returns after 12 years' absence, and sues both *B* and *C* for his property; by clause 9 of the Act, *A* must be nonsuited, *C* having held possession under the mortgage for the space of 12 years without recognizing the title of *A*, having obtained possession under a title *bonâ fide* believed to have conveyed to him an absolute right of property. But by Clause 8 of this Act, the law is in *A*'s favour, for *B* had no right to sell the property mortgaged to him by *A*; and as he concealed this part of the transaction when selling the property to *C*, he committed a concealed fraud; hence the latter clause provides for an award in favour of *A*. Judges would be puzzled which clause to adopt.

Clause 10. The judges are of opinion that this is provided for in a preferable manner in Sect. 7 of Regulation V. of 1827, and the provisions of clause 2 of the above section are not provided for in this Act.

Clause 11. It appears to the judges that the provisions of this clause, but certainly those of the foregoing one, should be excepted in clause 2 of this Act, otherwise they run counter to each other.

Clause 12. By the provisions of this clause, as they now stand, in reference to our laws, I am desired to observe, that magistrates will be obliged to hand up for trial of the session courts all offences, however trifling, if committed above one year from the date of the appearance of the offender, as magistrates have not the power by our Regulations to pardon offenders. This is so evidently objectionable, that it cannot certainly be intended, and it may be presumed that the object is to remit the prosecution of offenders coming within the jurisdiction of the magistrates, unless the offenders are brought up within the year after the date on which the offence was committed; this, however, is considered very objectionable in many points of view; the court would rather allow a discretion to the magistrates, which they now do not possess by law, either to prosecute or dismiss such cases.

The judges observe that the greater number of the provisions of this Act refer to points already governed by the laws of the Bombay Code, but to which no allusion has been made; if this or any similar Act is to be passed, the different sections of the Bomay Regulations referring to the same points, should be repealed, otherwise considerable confusion may be anticipated in the application of the

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different laws. In clause 5 of this Act, some Regulations are referred to inapplicable to this presidency, and the code is not specified.

I have, &c.

Bombay, Sudder Dewanee Adalut, 28 May 1841.

(signed) *W. H. Harrison*, Deputy Register.

(True copy.)
(signed) *J. P. Willoughby*,
Secretary to Government.

(No. 1131.)

Legis. Cons. 12 July 1841. No. 34.

From *J. Thomason*, Esq. Secretary to the Government of the North West Provinces, to *T. H. Maddock*, Esq. Secretary to Government of India, Legislative Department, Fort William.

Sir,

Judicial Dep.

I AM directed by the Lieutenant-governor to forward the accompanying copy of a letter from the register to the Allahabad Court of Sudder Dewany Adawlut, dated 21st ultimo, expressing the sentiments of the judges on the draft of a proposed Act received with your letter, No. 44, of the 5th April.

2. With some slight exceptions, the court seem generally to approve of the projected law, an opinion in which, as his Honor cannot concur, he has requested me to detail the following grounds of his dissatisfaction with its provisions.

3. Section 1 seems to bear upon matters cognizable by Her Majesty's Courts, and being of general application to all the presidencies, had better be kept separate from provisions like those in the sequel, to have effect only within the territory under the Company's courts, within the presidency of Fort William. It is true, that there is no limitation in words to the above effect, but the Regulations cited in the following sections are those of Bengal only, and this shows that presidency to be alone therein intended.

4. Sections 2 and 3 fix a term of six and of twelve years, for the entertainment of suits for moveable and immoveable property respectively; but, in the former, an exception, " for special and sufficient reasons," is inserted, not in the latter. In his Honor's opinion, there can be no argument for the exception in the one case that will not hold good in the other; for, whatever description of property a suit may be, a peremptory order of rejection after so brief a time as even 12 years, will sometimes operate very harshly. The best provision against the abuse of any discretion in such a matter, is to direct, as is done in cases of revision of judgment, the inferior court to obtain the sanction of its immediate superior for acting on the exception.

5. Section 4 would, in the opinion of the Lieutenant-governor, be improved by making five years instead of one, the period within which a decree may be summarily executed. Men in trade, or in service, may often be prevented suing out execution for a year, with no fault of theirs.

6. Section 5 is one that the people will be slow to apprehend; that afte gaining a decree they are to go the whole process over again, is what, in his Honor's opinion, they will account a gratuitous grievance, especially if the term of the preceding section be not prolonged.

7. The provisions of sections 6, 7, and 8 seem to the Lieutenant-governor to be unexceptionable, though he is not quite aware of the defect in the existing law, which they are required to supply.

8. In section 9, it appears to his Honor that the first part might be rendered more clear, by leaving out the passage from the 10th line, beginning with, " then such cause of action," &c. &c.; or at least detaching it from what precedes, and making of it a distinct sentence, beginning, " In these cases, such cause of action," &c.

9. The latter portion of this section seems to the Lieutenant-governor open to the objection of mutilating the existing law regarding mortgages. Section 8, Regulation XVII. of 1806, distinctly provides, that no mortgage can foreclose, and no conditional become an absolute sale, excepting by the mortgagee applying to a court of justice to issue a notice to the mortgagor, or seller, to pay within a year;

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year; a most salutary enactment, directed to the protection of the weak and the improvident, against the powerful and the crafty.

10. But, by the wording of the passage under consideration, it seems to be meant that a party having "obtained possession, from a mortgagee, under a title *bonâ fide* believed to have conveyed an absolute right of property," may not, if he has held for 12 years, be ousted, provided he has not, during that time, recognised the right of the claimant.

11. His Honor conceives that the probable working of such a rule may be thus employed: *A* mortgages his house, field, or garden, to *B*, and departs to trade, or in quest of service, to a distant land; as soon as *A* is gone, *B* goes through the form of giving a deed of absolute sale to his servant, friend, or creature, *C*; *A* thrives, makes money, and returns to redeem his property. He finds it in the real or ostensible possession of *C*, who, on the strength of the deed from *B*, asserts that he has had possession under a title believed to convey an absolute right, and sets him at defiance.

12. In this manner, the object of one of the best laws in our statute book, Regulation XVII. of 1806, will, in his Honor's opinion, be defeated, and the protection which it afforded to the needy, the absent, or the simple, will be transferred to the wealthy, the settled, and the designing.

13. Section 12, relating to the administration of criminal justice, appears to the Lieutenant-governor, however expedient in itself, to be out of place where it is.

14. Section 13 is, the Lieutenant-governor doubts not, indispensable; but the necessity for its insertion presents a strong argument against the whole draft.

15. Section 14 is, in his Honor's opinion, a most advisable rule to enact, if, what he still hopes may not happen, the draft to which he sees so many objections should ever pass into a law.

I have, &c.

Agra, 21 June 1841. (signed) *J. Thomason*,
Secretary to the Government of the N. W. P.

Abstract.

Forwards copy of letter from the Sudder Dewanny Adawlut, containing the sentiments of the judges on the draft of proposed Act for amending the Law regarding the limitation of suits and summary proceedings.

(No. 914.)

From *M. Smith*, Esq. Register, Allahabad, to *J. Thomason*, Esq. Secretary to the Honourable the Lieutenant-governor in the Judicial Department, North-western Provinces, Agra.

Sudder Dewanny Adawlut, North-west Provinces.
Present: B. Taylor, G. P. Thompson, F. Currie, and H. H. Thomas, Esqrs. Judges.
Sentiments of court communicated on draft of proposed Act for amending the law regarding the limitation of suits and summary proceedings.

Sir,

I AM directed to acknowledge the receipt of Mr. Edwards' letter, No. 768, dated 27th ult., asking the opinion of the court on the draft of a proposed Act for amending the law regarding the limitation of suits and summary proceedings, and to request that you will submit for the consideration of the Honourable the Lieutenant-governor, the few remarks that suggest themselves to the court as follows:

2. The object of the proposed law and the generality of its provisions appear to the court wise and excellent.

3. The 2d and following sections (in the words of the preamble in section 1) "modify the law with respect to the limitation of suits, as administered in the courts of the East India Company;" and it seems to the court that greater clearness would be attained by the modified Regulations, or parts of Regulations, alluded to being specified in the Act.

4. Regarding the exception (in section 2) allowing of "special and sufficient reasons" being stated on the face of the decree, the court observe, that the wording appears too indefinite, and that a more precise statement of what should be held to constitute such reasons would tend to the avoidance of confusion, and the securing of uniformity of practice in the courts. The court see no objection to

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to its being declared that the disabilities specified in section 6 shall constitute the only sufficient reason for delay in the institution of suits under this section.

5. Mr. Taylor is disposed to doubt whether the provision in section 5, regarding execution of decrees, ought to extend to decrees passed in *ex parte* decisions.

6. The wording of section 8, in respect to the definition of the time when the right to bring a suit in cases of concealed fraud, shall be deemed to have first accrued, seems to Mr. Thompson too indefinite, and the provision of section 12 is deemed by the court open to objection, as appearing to hold out a temptation to resist or evade the magistrates' process.

I have, &c.

Allahabad, 21 May 1841. (signed) *M. Smith*, Register.

(True copy.)

(signed) *J. Thomason*,
Secy to the Govt of the N. W. P.

(No. 988.)

Legis. Cons. 12 July 1841. No. 35.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Sir,

Judicial Dep.

I AM directed by the Right hon. the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government the accompanying original letter, No. 2028, from the register of the Sudder Dewanny Adawlut, dated the 4th instant, submitting the court's remarks and suggestions on the provisions of the proposed "Act for amending the law with respect to the limitation of suits and summary proceedings," the draft of which accompanied your letter, No. 45, dated the 5th April last, together with a revised draft framed by the court in accordance with those suggestions.

I have, &c.

(signed) *F. J. Halliday*,
Fort William, 22 June 1841. Secy to Govt of Bengal.

P.S.—Please to return the original enclosures.

(No. 2028.)

Legis. Cons. 12 July 1841. No. 36. Enclosure.

From *J. Hawkins*, Esq. Register, Fort William, to *F. J. Halliday*, Esq. Secretary to Government of Bengal, in the Judicial Department, Fort William.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges, and J. F. M. Reid, Esq. Temporary Judge.

I AM directed to acknowledge the receipt of the orders of the Right hon. the Governor of Bengal, No. 645, dated 20th April, forwarding a letter (No. 45, dated 5th January,) from the Secretary to the government of India in the Legislative Department, together with the draft of a proposed Act for amending the law with respect to the limitation of suits and summary proceedings which accompanied it, and to request that you will submit the following observations for his Lordship's consideration.

2. The court suggest that in section 2 of the proposed Act, the words "to be written in the decree" be substituted for "stated on the face of the decree," as being more easily rendered into the native languages.

3. In section 3 the court suggest the insertion, after the word "prohibited," of "except for special and sufficient reasons, to be inserted in the decree."

4. The court observe that by section 2 provision is made for the period within which suits for personal property are to be instituted; and in like manner by section 3, in suits for real property; section 5 provides for the period within which execution of a decree may be sued out, but no provision is made regarding the period

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period in which a suit is to be brought for reviving execution of a decree, supposing that the period laid down in section 4 has been exceeded. It may indeed be intended by the terms of section 5, noted in the margin,* that an application for execution of a decree preferred after the expiration of a year, shall be subject to the rules of limitation laid down in sections 2 and 3, as the case may be, for moveable or immoveable property. This, however, is by no means clear, especially as section 9 makes no mention of the period when, in such a case, the cause of action shall be held to have arisen. The court are of opinion that this point should be specially provided for; and that as the merits of the original decree cannot be impugned, the institution of a suit for reviving execution of a decree should be limited in all cases to six years from the date on which the decree ceased to be susceptible of execution under section 4 of the Act.

* Shall be considered as a suit instituted to revive the execution of the same.

5. The court are of opinion that section 6 is unnecessary, as the term "special and sufficient reasons" in sections 2 and 3 appears to them fully to provide for the cases of disability contemplated by its provisions. The wording of the section is, moreover, rather obscure; as the effect of it may be, in some instances of disability, to curtail the periods of limitations allowed by sections 2 and 3. Thus, for instance, in the event of the cause of action having arisen one year before the disability ceased to have effect, the whole term allowed to bring the action might be held as only four years instead of six or 12, as already provided. The court are fully aware that the terms of the section, taken in consideration with the rest of the Act, do not necessarily require such a construction, the object being to grant, in cases of disability, an extension of three years beyond the general fixed limitation; but as the law would apply to the courts of the native judges, who, in their interpretation of the section, would probably confine themselves to its express terms, the court consider it desirable that, if enacted, the phraseology should be so clear as not to leave a doubt of its meaning.

6. The court are not able to form any opinion of the provisions of section 7, as they do not clearly understand the kind of cases which would be affected by it. They would suggest that the section be omitted.

7. They would also suggest that section 9 be omitted. They consider any definition of the term "cause of action" to be unnecessary, and that cases of mortgage should come under the general law of limitation.

8. Section 12 being wholly foreign to the general subject of the Act, should, in the opinion of the court, be also omitted.

9. In the 14th section the court recommend that 12 months be substituted for six months.

10. A draft, containing all the alterations suggested by the court, is herewith submitted for the consideration of his Lordship.

I have, &c.
(signed) *J. Hawkins*, Register.

Fort William, 4 June 1841.

DRAFT of an ACT for amending the Law with respect to the Limitation of Suits and Summary Proceedings.

1. WHEREAS it is expedient to extend to Her Majesty's Supreme Courts within the territories of the East India Company various amendments recently made in the English statute law respecting the limitation of suits: and whereas it is also expedient to modify the law with respect to the limitation of suits as administered in the courts of the East India Company, and to consolidate various enactments upon that subject applicable to different presidencies: and whereas it is also expedient to enact some provisions for limiting the period of certain legal proceedings with reference as well to the law of England as to the Regulations of the different presidencies:

It is hereby enacted, that so much of the Statutes 2 & 3 Will. 4, c. 71, 3 & 4 Will. 4, c. 42, 3 & 4 Will. 4, c. 27, as relates to the limitation of suits, and so much of the same as relates to forms of action abolished by those statutes, or any of them, shall be extended to Her Majesty's Courts within the territories of the East India Company: provided always, that wherever in those statutes any period is limited with reference to the time of passing the same, the corresponding

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ing period in the present Act shall be six months from the time of passing thereof.

2. And it is hereby enacted, that the several of courts the East India Company are prohibited, except for special and sufficient reasons, to be inserted in the decree, from trying any suit other than for the recovery of immoveable property, or of some right derived from such property, or any suit for reviving a decree as hereinafter mentioned, if the cause of action shall have arisen six years before the commencement of such suit.

3. And it is hereby enacted, that the courts of the East India Company aforesaid are prohibited, except for special and sufficient reasons, to be inserted in the decree, from trying any suit for the recovery of immoveable property, or for any right derived out of such property, if the cause of action shall have arisen 12 years before the commencement of such suit.

4. And it is hereby enacted, that no decree of any civil court of the East India Company shall be executed summarily in the manner now prescribed by the Regulations, unless application for the same shall have been preferred within the period of one year from the date on which the decree may have been passed.

5. And it is hereby enacted, that every application for the execution of a decree of any such civil court as aforesaid, preferred after the expiration of one year from the time of passing thereof, shall be considered as a suit instituted to revive the execution of the same, and shall be subject to the rules enacted by Regulation IV. 1793, and the other Regulations in force for receiving, trying, and deciding suits declared cognizable by civil courts of judicature, and to the several stamp duties prescribed by Clause 8, Schedule (B.), Regulation X. of 1829, on the institution of suits and appeals in those courts: provided always, that the several courts of the East India Company are prohibited, except for special and sufficient reasons, to be inserted in the decree, from trying any suit for reviving execution of a decree, unless the same be brought within six years from the expiration of the period allowed for suing out execution under section 4 of this Act, and provided that no stamp duty or fees, payable by the plaintiff, in any such suit for reviving a decree, shall in any case be recoverable from the defendant; and provided also, that in any such suit the defendant shall not be allowed to impugn the merits of the original decree.

6. And it is hereby enacted, in regard to suits in such civil courts as aforesaid, that in every case of a concealed fraud, the right to bring a suit shall be deemed to have first arisen at and not before the time at which such fraud shall, or with reasonable diligence might have been first known or discovered.

7. And it is hereby provided, in regard to suits in such civil courts as aforesaid, that any acknowledgment in writing, and signed, shall preclude the person signing the same from pleading the aforesaid limitations against the party in whose favour such acknowledgment may have been given, except so far as relates to the lapse of time after the date of such acknowledgment or the last of such acknowledgments.

8. And it is hereby enacted, that all suits for penal damages, brought in any such civil courts as aforesaid, shall be preferred within one year after the cause of action shall have arisen, and that no period be allowed for disabilities in such cases.

9. And it is hereby provided, that this Act shall not extend to any suits for the recovery of the public revenue, or for any public right or claim whatever.

10. And it is hereby provided, that all suits that may be now pending, or that may be instituted within the period of 12 months from the date of the passing of this Act, shall be tried and determined in the same way that they might have been at any time before the passing of this Act.

(signed) *J. Hawkins,* Register.

No. 1.

(No. 88.)

From *F. J. Halliday*, Esq. Officiating Secretary to Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 12 July 1841. No. 37. Legislative Dep.

Sir,

In continuation of my letter, No. 65, of the 5th April last, I am directed by the Governor-general in Council to transmit to you, for submission to the Law Commissioners, the accompanying copies of papers noted in the margin,* containing observations on the proposed draft Act for amending the law with respect to the limitation of suits and summary proceedings.

* Letter from the Honourable the Judges of the Supreme Court at Madras, dated 27 April 1841.
„ from ditto of Bombay, dated 4 May 1841.
„ from Secretary Government of Bombay, dated 2 June 1841, with Enclosure.
„ from Secretary Government of North West Provinces, dated 21 June 1841, with Enclosure.
„ from Secretary Government of Bengal, dated 22 June 1841, with Enclosure.

I have, &c.

Fort William, 12 July 1841.

(signed) *F. J. Halliday*, Officiating Secretary to Government of India.

(No. 490.)

From *H. Chamier*, Esq. Chief Secretary to Government, Fort St. George, to *T. H. Maddock*, Esq. Secretary to the Government of India.

Legis. Cons. 26 July 1841. No. 17.

Sir,

Judicial Dep.

With reference to your letter of the 5th of April last, No. 42, in the Legislative Department, I am directed by the Right hon. the Governor in Council to transmit, for the information of the Government of India, the accompanying copy of one from the judges of the Sudder Udalut, dated the 28th ult., No. 78, containing their observations on the provisions of the proposed Act for amending the law with respect to the limitation of suits and summary proceedings.

2. The judges suggest, that as the draft Act appears intended to apply to the districts under the three presidencies, all allusion to the local Code of Bengal, which is inapplicable to the territories under Madras and Bombay, be omitted; and they also observe that the expression "absence beyond seas," seems objectionable, as it would scarcely ever include pilgrimages of Hindoos, which are the most frequent causes of prolonged absence from home.

I have, &c.

Fort St. George, 3 July 1841.

(signed) *H. Chamier*, Chief Secretary.

(No. 78.)

From *W. Douglas*, Esq. Register Sudder and Foujdaree Udalut, Fort St. George, to the Chief Secretary to Government.

Legis. Cons. 26 July 1841. No. 18. Enclosure.

Sir,

Para. 1. With reference to the draft Act in the Gazette of the 27th April last, respecting the limitation of suits, I am directed by the Court of Sudder and Foujdaree Udalut to suggest that, as it appears intended to apply to the districts under all the three presidencies, all allusion to the local Code of Bengal, which is inapplicable to the territories under Madras and Bombay, be omitted, by leaving out in section 5 the following words: "The rules enacted by Regulation IV. 1793, and," and by inserting the words "existing law," instead of Clause 8, Section B., Regulation X. "1816."

2. The expression "absence beyond seas," strikes the court as objectionable, because it would scarcely ever include pilgrimages of Hindoos, which are perhaps the most frequent causes of prolonged absence from home.

(signed) *W. Douglas*, Register.

Sudder and Foujdaree Udalut Register's Office, 28 June 1841.

(A true copy.)

(signed) *H. Chamier*, Chief Secretary.

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(No. 101.)

From *F. J. Halliday*, Esq. Officiating Secretary to Government of India, to *J. C. C. Sutherland*, Esq. Secretary Indian Law Commission.

Legis. Cons. 26 July 1841. No. 19. Legislative Dep.

Sir,

With reference to my letter, No. 65, of the 6th April last, and subsequent dates, I have the honour, by direction of the Right hon. the Governor-general in Council, to transmit to you, for submission to the Law Commission, the accompanying copy of a communication from the Chief Secretary to the Government of Fort St. George, No. 490, dated the 3d instant, containing observations of the judges of the Sudder Adawlut at that presidency on the proposed Act for amending the law with respect to the limitation of suits and summary proceedings.

I have, &c.

Fort William, 26 July 1841.

(signed) *F. J. Halliday*,
Officiating Secretary to Government of India.

Legis. Cons. 21 March 1842. No. 26.

To the Right honourable the Earl of *Auckland*, G. C. B. Governor-general of India, in Council.

From Mr. Secretary Maddock, dated 5th April and 26th July 1841.

In pursuance of the instructions of your Lordship in Council we have considered the proposed Act for amending the law with respect to the limitation of suits, and having been led to examine the subject generally, we have now the honour to report thereupon, and to submit the rules which, with a few formal alterations, we design to introduce in the codes, the preparation of which is entrusted to the Law Commission. We have put those rules in the shape of an Act, with a view to their being brought into early operation, if your Lordship in Council shall approve of the principles and provisions we recommend.

Your Lordship in Council will perceive that we propose to introduce positive as well as negative prescription. By the former a title is acquired by long possession; by the latter, sometimes only the right to bring an action is barred, sometimes also the title is extinguished, by long dispossession. Positive prescription is not recognised by the Codes of Bengal and Madras; negative prescription is recognised, but only as precluding the institution of suits. By the Bombay Code, prescription is recognised as conveying "a sufficient right of property."

By the English law positive prescription is allowed only in respect of incorporeal hereditaments, but long possession or enjoyment is protected by the rules for the limitation of actions; and by a late statute it is provided, in respect of real property, that at the determination of the period limited for bringing an action the right and title of the owner shall be extinguished.

Positive prescription.

Although the negative prescription created by rules of limitation, by preventing actions for the recovery of property from persons who have had adverse possession for a certain time, secures the occupants in their possession, it yet leaves the property in an anomalous and undetermined state. The law takes away the remedy of the party whose right it still admits, and protects the interest of the party in possession, while it refuses to acknowledge any right in him. Hence a variety of difficult and perplexing questions may arise. With a view to impart a more uniform and simple character to the law, and to obviate the uncertainties which are apt to proceed from separating rights from remedies, we propose to allow a positive prescription in respect of all corporeal property, moveable as well as immoveable, and incorporeal rights derived out of or affecting immoveable property and hereditary offices, by which a title shall be acquired by uninterrupted possession or enjoyment for a certain time, provided that in the case of property and offices, possession shall have been held, mediately or immediately, as by virtue of a proprietory right, it being explained that violent dispossession remedied by the interposition of authority shall not be deemed an interruption within the meaning of the Act. And further, with respect to rights derived out of or affecting immoveable property, we propose, in favour of the owner of such property, that they shall be extinguished by disuse for a certain time. A special provision to this effect appears to be necessary from the nature of the case. For as the rights in question are rights *in re alienâ*, the owner of the property affected could not himself acquire them by possession or enjoyment, and the object is really to exonerate the property from the charges or servitudes to which it was subject under such rights existing in another

another party. For instance, a right of way or a right to light over the land to *B* might be acquired by *A* under the general rule of positive prescription we propose, but if such a right should be disused by *A* for the period of prescription, it could not be said to be transferred to *B*. It is necessary, therefore, to extinguish the right of *A* in order to exonerate the land of *B*.

The framers of the statute 2 & 3 Will. 4, c. 71, have apparently not thought it right to deviate so far from the English notion of title by prescription as considerations of convenience seem to us to recommend.

According to the English notion in its purity, the possession or enjoyment which gives title by prescription ought to have no assignable beginning, and no end; that is to say, it should occupy, or be held to occupy, the whole of time down to the present moment. This notion is so far modified by the statute, that now the possession or enjoyment may have a beginning, but even now it must not have an end; for by the fourth section, "each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been or shall be brought into question." The section then provides that nothing shall be deemed an interruption unless it shall have been acquiesced in for one year.

So that even now no length of enjoyment will give a title to a way, (for example,) as indefeasible as a title by grant, for every title to a way by prescription founded upon uninterrupted enjoyment for any length of time, may always be defeated by an interruption of one year; whereas the principle suggested by a regard to convenience seems to us to be that a title once gained by prescription should not be lost, until in the case of corporeal hereditaments, a title by prescription to the same subject matter is gained by some other person, or in the case of incorporeal hereditaments, until the time provided in general for exonerating the property affected thereby shall have elapsed. In other words, that a title by prescription should be as indefeasible as any other title.

Since no right other than a right to an incorporeal hereditament can be acquired by prescription according to English law, this deviation from what seems to us the principle recommended by convenience is comparatively unimportant; but as we allow a title to land to be acquired by prescription, very absurd consequences would follow if we adopted the same doctrine. If a man who had acquired a title to land by 12 years' possession could lose his title by one year's interruption, there would be reclaimed and cultivated land without any lawful owner. It is worth remarking, too, that the principle for which we contend has been applied by Lord Chief Justice Tindal to that presumption of a seisin in fee which arises, according to English law, from 20 years' possession, which presumption supplies in some degree the place of prescription.

In the case of *Doe* dem. *Harding* v. *Cooke*, 7 Bingham, 346, the Chief Justice thus expresses himself—"In this case it was proved that the elder Harding and his son held the premises for 23 years, and during that time received and increased the rent, an unequivocal act of ownership from which the law presumes a seisen in fee. The father died seised, and the lessor of the plaintiff is the only son who is shown to have survived him. That would be enough, even in a writ of right, to call on the tenant to establish a stronger claim. It is admitted on the part of the defendant that this would have been sufficient if the ejectment had been brought within a year or two after the lessor of the plaintiff had been out of possession; but if two years would not have preponderated against the lessor of the plaintiff, I cannot see why any period short of 20 years should be supposed to raise a counter presumption sufficient to outweigh the presumption arising from the first 20 years." In this case the defendant had been 10 years in possession.

Negative prescription.

With respect to all matters to which positive prescription is not applicable, we propose to allow a negative prescription by barring suits after the lapse of a certain time, and extinguishing the right of the party who might have brought a suit within the time limited.

Periods of positive prescription.

The period of positive prescription for the acquisition of a title which we propose with respect to immoveable property and hereditary offices, viz., 12 years, is the same as is now applicable by the rules of limitation in the codes of Bengal and Madras to suits for such property, &c., and as is proposed to be applied to such suits generally by the draft Act read in Council, and published on the 5th April 1841. The limitation applicable to such suits by the Bombay Code is 30 years. It was formerly the same as that fixed by the codes of Bengal and Madras. The

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extension from 12 to 30 years was made in 1823. We have no reason to think that the period of limitation which has been observed from the first establishment of the courts in the presidencies of Bengal and Madras has been found in practice to be too contracted, or that there are any peculiar circumstances which render it advisable to allow a longer period for the acquisition of rights of the same kind in the presidency of Bombay.

The period of positive prescription which we propose with respect to moveable property is six years, the same as the period of limitation proposed in the published draft Act, to be applied generally to suits other than for immoveable property, and which we recommend to be applied to the generality of suits for debts and damages. As the mere fact of possession already gives a right in respect to moveable property until an adverse title shall be proved, and sometimes against an adverse title, we have introduced a proviso that the proposed prescription shall not be construed to affect rights now arising from periods of negative prescription.

By the existing codes of Bengal* and Madras, there is only one period of limitation, viz. 12 years, for all sorts of suits, with exception in the Bengal Regulations of suits for penalties and penal damages, and suits against the awards of the revenue authorities in matters of rent, which are limited to one year. By the Bombay Code suits for damages on account of injury to the person and reputation, and for the recovery of the privileges of caste, are limited to one year; and suits for debts not founded upon or supported by writings, and for damages other than those above specified, are limited to six years. All other suits, except suits for the recovery of immoveable property, are limited to 12 years.

The published draft Act, as we have remarked, reduces the limitation to be applied to all suits other than for immoveable property to six years, except suits for penal damages, which are required to be prosecuted within one year.

Limitation of suits, or negative prescription.

We propose three periods of limitation for suits other than for property and rights, subject to positive prescription, viz. 12 years, six years, and one year.

There is only one class of suits, for the prosecution of which we propose to allow so long a period as 12 years, viz. suits for the recovery of legacies. It seems to be advisable to allow an extraordinary latitude in such cases, because legatees may often remain in ignorance of the bequests made to them without there being any reason to infer laches on their part, since executors are under no obligation to seek them out and apprise them of the benefit they have become entitled to. We may observe that by the English statute 3 & 4 Will. 4, c. 27, sect. 40, the longest period of limitation, 20 years, is allowed for suits for the recovery of legacies, as for the recovery of lands and for money charged upon lands. It will be remarked that the period of limitation we propose in the case of legacies is the same as the period of positive prescription for immoveable property. In case of legacies being withheld by means of concealed fraud, the general provision in regard to the remedy for wrongs done by such means will be applicable.

We have adopted the limitation of six years as the general rule for suits for debt and damages, conforming to the published draft, in making no difference between debts upon specialty and debts upon simple contract. But we think it advisable to contract the limitation to one year in regard to suits for wages and hire, and for the recovery of simple debts for supplies and accommodations furnished in the expectation of prompt payment, and usually discharged monthly or at shorter periods. We follow the Bombay Code in recommending that the limitation of one year be applied also to suits for damages on account of injuries to the person and reputation, including in the latter, defamation by libel as well as words spoken. The English law makes a difference in the limitation for actions for libel, and for actions for words spoken, but we believe that the former are usually brought within the time prescribed for the latter, and that the case is considered suspicious when the action is brought at a later period.†

There is no special limitation in the Regulations of Madras and Bombay for suits for the recovery of penal damages and penalties. We follow the published draft in applying the limitation of one year prescribed by the Bengal Code to all suits of this nature, which can be brought in the ordinary civil courts under the existing

* An extension is allowed specially in respect of suits for real property in cases of fraud or violence, by Bengal Regulation II. of 1805.

† Suits in the ecclesiastical courts for defamatory words must be commenced within six months; and in the criminal courts informations for libel will not be granted unless applied for within the next term.

existing Regulations of the several presidencies. It is to be observed, however, that the penalties expressly prescribed in the Regulations are chiefly for offences against the revenue laws and the laws relating to distraint, which, generally speaking, are not recoverable in the civil courts, but are adjudicable by the revenue authorities, or in the criminal department. By the Bengal Regulations, in some cases, the period limited for recovery of penalties adjudicable by the revenue authorities is confined to six months. To prosecutions of penalties adjudicable by the magistrates and revenue officers, the limitation of one year will be applicable under the provisions which we have introduced in sect. 17, unless where a shorter period is specially prescribed by any existing law.

The summary decisions of the civil courts on claims arising incidentally in the execution of process for the satisfaction of decrees are open to the same course of appeal as decisions in regular suits—and after all, the same claims may be brought before the courts for further investigation and adjudication in regular suits. To these suits, there is at present no special limitation by the Regulations of any of the presidencies. We are inclined to think it advisable that some rule should be prescribed to bring such cases to a final settlement without delay. What we would suggest for consideration is, that after a summary inquiry has been made, and a decision passed upon it, the party dissatisfied should be barred of his remedy if he does not institute a regular suit within the period of one year, to be reckoned from the date of the first decision, or of the decision in appeal, if an appeal has been preferred. This appears to be expedient in order that the suspense of the party in whose favour the court's summary award has been given may be early terminated, and that he may be either assured in the possession which he holds under that award, or warned to defend it against a definite claim.

We retain the provision of the Bengal Code which assigns the same period of limitation to regular suits brought to contest the summary awards of the revenue authorities in matters connected with arrears or exactions of rent. By the Madras Code an appeal is open to the zillah judge by regular suit from the decision of the revenue authorities in such cases; but the time allowed for instituting such suit is only 30 days. By the Bombay Code the collector is vested with civil cognizance in the first instance of all disputes regarding rent, and proceeds in such cases according to the rules prescribed for the civil courts in the trial of regular suits. From the decisions of the collector a regular appeal lies to the zillah judge within 90 days. The proposed provision will therefore not be applicable in the Bombay presidency. Nor do we intend to supersede the present rule in the Madras presidency. We mean that one year should be the maximum period of limitation for suits of this description; but we would leave undisturbed for the present any shorter periods of limitation that may be prescribed by existing Regulations.

Reg. VIII. of 1831, sec. 6.

Reg. V. of 1822, sec. 16.

Reg. XVII. of 1827, chap. 8.

It will be observed that we have introduced a provision to this effect, having a general reference to all the limitations proposed. Under its operation the special rule of the Madras Code just adverted to, will be maintained; as well as another which appears to be of sufficient importance to be noticed particularly, whereby persons confined by collectors for arrears of revenue which they deny to be justly due, are at liberty to prosecute the collectors, but are required to institute their action within three months.

Sec. 3.

Lastly, we have brought under the limitation of one year suits founded on the right of pre-emption. We think it proper that a right of this kind should be asserted promptly, or be considered as foregone.

Under the proposed rules of prescription, in order to make a prescriptive title in opposition to any other title that may be proved, it will be necessary to show that the possession was adverse thereto; and in the case of incorporeal rights, prescription will not take effect if the enjoyment shall have been permitted by express consent or agreement in writing.

Rules of prescription.

As to what shall be accounted adverse possession, and from what periods, in different cases, the commencement of it shall be reckoned, some directions are given, which perhaps will be sufficient for the general guidance of the courts.

To secure rights in remainder, it will be observed, that we have provided that prescription shall not be allowed on the ground of possession against a title which shall have accrued after the possession commenced, but from the time at which the title accrued.

In the case of property purchased *bonâ fide* for valuable consideration from a trustee, or from a depositary, or mortgagee, or from a party who shall have

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acquired it by a concealed fraud, we propose to allow prescription in favour of the purchaser to run in the last case from the time of the first acquisition, in the other cases from the time of the acquisition by purchase. The stat. 3 & 4 Will. 4, c. 27, likewise makes a distinction in favour of the purchaser of property acquired by a concealed fraud, supposing him to have dealt in the matter *bonâ fide*. The ground of the distinction is the presumption, that under the circumstances supposed, the purchaser had no reason to suspect any defect in the title of the seller, but on the contrary, every reason to believe it to be good and sufficient, from possession having been taken without opposition, and held independently without challenge; whereas the purchaser from a trustee, &c. might by due diligence discover the nature of the interest under which the seller had occupied, and so learn that his possession had not been adverse.

Sec. 26 compared with section 25.

In the case of trust property, we do not allow a prescriptive title to be acquired by possession for any length of time, except as above by a *bonâ fide* purchaser for valuable consideration.

It will be observed that we have provided, that a title by prescription shall be acquired by the uninterrupted possession of moveable property for 30 years, and of immoveable property for 60 years, by or through a mortgagee or depositary, unless a written acknowledgment of the title of the mortgagor or depositor shall have been given in the meantime. After much deliberation we have come to the conclusion that it is advisable to recognize possession for such lengthened periods as extinguishing the rights of the mortgagors or depositors, unless care shall have been taken to preserve them by obtaining an express acknowledgment from the parties in possession. The former owners having so long neglected to redeem their property, and having omitted to secure their right in this manner, may be considered to have virtually abandoned it, and we think it expedient that a new ownership should then be established of course in the actual possessors. We may observe that sect. 28 of the statute 3 & 4 Will. 4, c. 27, bars a mortgagor after 20 years from the time the mortgagee took possession, when there has been no intermediate acknowledgment in writing of the mortgagor's title. We have gone upon the same principle, but we think the habits of the people in this country in respect to mortgages would be too violently interfered with by the time for redeeming them being contracted to so short a period.

With respect to property of which possession has been acquired by a concealed fraud, we have followed the principle of section 8 of the published draft, which corresponds with that of sect. 26 of the statute 3 & 4 Will. 4, c. 27, in providing that the possession shall not be deemed adverse to the party having a lawful title until the time when the fraud might with reasonable diligence have been discovered by him; and we have conformed to the statute also in allowing exception from this rule, when the possession has passed from the fraudulent party to a *bonâ fide* purchaser. We have gone beyond the statute in allowing a further exception in favour of a party not privy to the fraud, who has succeeded to it by inheritance or devise. The codes of Bengal and Bombay both admit the principle of protecting a person in possession of property under a title acquired *bonâ fide*, notwithstanding fraud on the part of the person from whom it was acquired. The Bengal Code extends the privilege to any "fair title believed to have conveyed a right of possession and property," besides title by "inheritance, purchase and fair donation" which are particularly specified. The Bombay Code allows it to any "title believed to be good." This code further allows a title by prescription to the fraudulent party, by possession for a period double the ordinary term. The Madras Code has no special provision for cases of fraud. We think that the protection we propose may properly be allowed to the heir or devisee coming into possession by the death of the fraudulent party, but as properly denied to any one acquiring possession from him by donation, or in any way without valuable consideration during his life. We are aware that donation among Hindoos is a common mode of disposing of property, in anticipation of death, but it would not be easy to distinguish cases of this kind, and the object may be effected, if the proposed disposition is not contrary to law, by means of a testamentary paper.

The provisions referred to in the statute, and also in the codes of Bengal and Bombay, are confined to immoveable property. We see no reason for this restriction, and the provisions we propose on this subject as well as those regarding trusts, deposits, and mortgages above noticed, are intended to be applied to property of all kinds.

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Rules of limitation.

The general rule laid down is, that the period of limitation applicable to every case shall be reckoned from the time the cause of action arose.

With respect to suits for the recovery of legacies and debts, we have provided that where written acknowledgments* have been given, or payments† made on account of principal or interest, a new period of limitation shall be reckoned from the date of the acknowledgment or payment. With respect to suits for balances upon account current between merchants and traders, it is directed that the limitation shall be reckoned from the close of the year in the accounts of which there is the last entry indicating a continuance of mutual dealings.

In suits for damages for wrong done by a concealed fraud, it is provided that the cause of action shall be deemed to have arisen at the time such fraud was or might have been discovered.

Exceptions from the rules of prescription, positive and negative, on account of disabilities.

We propose that in computing the periods of prescription, positive and negative, the time shall be excluded during which, in the former case, any party entitled to interrupt the possession upon which a prescriptive title is claimed, in the latter case the party desiring to bring a suit, or any party through whom he claims shall have been under the disability of infancy or unsoundness of mind, or shall have been absent, subject to the following restrictive conditions, viz. that the time excluded by reason of infancy and unsoundness of mind shall not exceed 18 years; and that the time excluded by reason of absence shall not exceed five years, and that the absence shall be continuous from the time the title accrued or the cause of action arose; and with respect to suits of the kinds described in clause 1, section 9, excepting suits for penal damages, in which we think the limitation should never be relaxed, that the time excluded for any such cause shall not exceed five years.

By the published draft, an exception from the prescribed limitations is allowed for disability from infancy, idiotcy, lunacy, or absence beyond seas, at the time the cause of action arose, in the person then entitled to sue, but not for disability in any person afterwards entitled to sue in succession to him. The period of three years is allowed for bringing a suit, after the person to whom the right shall have first accrued shall have ceased to be under any such disability, or shall have died, whichever shall have first happened, with a proviso that disability by reason of absence shall not be admissible beyond 20 years.

By the codes of Bengal and Madras exception is allowed on account of the minority of the claimant or "other good and sufficient cause." The Bombay Code makes such allowance only for minority, or continued insanity.

We have thought it proper to specify the causes for which exception from the rules of prescription shall be allowed, and not to leave any discretion to the courts. We see no reason to provide for any other but those we have specified. The rules we propose, it will be observed, provide for natural disabilities occurring successively to parties successively interested, subject to the restriction of a maximum period beyond which no allowance is to be made.

Absence is allowed to bar prescription, positive and negative, but for no longer time than five years over the stated period, and only when the party first entitled to interrupt possession, or to bring a suit, was absent at the time the title accrued, or the cause of action arose, and continued absent for the whole time claimed. The absence must be out of the Company's territories, the territories contiguous, and the island of Ceylon, instead of beyond seas as it stands in the published draft. It would not be expedient to allow absence merely out of the Company's territories to bar prescription, and we think it is not too strict to deny the proposed indulgence to persons who have resided anywhere within the contiguous territories or the adjacent island of Ceylon, while they have been out of the limits of the Company's dominion. Allowing five years for absence, the periods of prescription for the acquisition of property will be extended to 17 and 11 years, and for barring suits to 17, 11, and 6 years; and we do not think it reasonable that they should be longer protracted for such a cause, which generally depends more or less on the will.

It will be observed, that we have provided that in computing the period of positive prescription in regard to moveable property, and of negative prescription in regard to all suits, the time shall be excluded during which the party claiming prescription, or the defendant in a suit, shall have been absent out of the territories

* According to sec. 10 of the published draft Act.

† Act 3 & 4 Will. 4, c. 42, sec. 5.

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tories of the East India Company. The absence of the person having adverse possession of immoveable property need not prevent a party entitled to the property from taking the necessary steps to recover it, as the absent party must have a local representative; but nothing generally could be done in such a predicament for the recovery of moveable property in the possession of the absentee, or of debts or damages for which he may be liable: hence arises the necessity for the provision proposed. In such cases the difficulty arises from the party being beyond the reach of process, and therefore allowance must be made for his absence when he has been out of the Company's territories, although he may have been residing within the contiguous territories, or the island of Ceylon.

Further, we propose that, in computing the period for the acquisition of a title by prescription, the time shall be excluded during which a suit brought *bonâ fide* to interrupt the possession shall have been pending, and shall have been diligently prosecuted, in any court of judicature, which from defect of jurisdiction or other cause shall have been unable to decide upon it, or shall have passed a decision, which on appeal shall have been annulled for such cause; and a corresponding provision is proposed in respect to the computation of the period of limitation under such circumstances.

Following the principle of section 34 of the Act 3 & 4 Will. 4, clause 27, we have introduced in section 15, a provision to extinguish the right when the legal remedy is barred by the limitations proposed to be enacted.

We propose to substitute the provisions in section 23 for that contained in section 12, of the published draft. It will be observed that we mean them to be applied to offences punishable by a magistrate or justice of the peace, by fine only, which will embrace penalties for breaches of the revenue laws in cases cognisable by the magistrates, and also offences of the same nature cognisable by officers of revenue, intending to include under this designation officers of the salt, opium, and abkarry departments.

We have not thought it advisable to introduce into this draft a provision corresponding with section 5 of the published draft, by which it is proposed "that every application for the execution of a decree preferred after the expiration of one year from the time of passing thereof, shall be considered as a suit," and subject to the rules for regular suits, and the stamp duties chargeable thereon. We have no information to lead us to believe that laches often occurs on the part of decree holders in respect to execution, when there are visible means by which to obtain satisfaction of the judgment in their favour, and without such laches it may be deemed hard to subject them indiscriminately to heavy costs, when upon the discovery of means after the lapse of a year they come to the courts for assistance to make them available. It occurs to us, however, that it may be proper to fix a certain period of years after which process of execution shall not be allowed by the courts.

But the considerations upon which this seems to be advisable belong properly to the subject of insolvency which we are now investigating, and in submitting our views on that subject we shall state them fully.

Her Majesty's Supreme Courts.

It will be observed, that the draft Act now submitted is not intended to have force in respect of property situated or being within the local limits of the jurisdiction of any of Her Majesty's Supreme Courts, or of suits or actions in those courts. It is thought to be very desirable, however, that the periods of limitation or negative prescription, should be the same both for causes subject to the jurisdiction of Her Majesty's courts, and for causes subject to the jurisdiction of the courts of the East India Company throughout the British territories in India, and that the rules should be assimilated as nearly as circumstances will admit, especially in respect of the allowance to be made for disabilities; and it appears to us that the present opportunity might be conveniently taken to effect this important object.

With respect to actions in Her Majesty's courts in which Hindoos or Mahomedans are parties, if the case falls within the exception of 21 Geo. 3, c. 70, sect. 17, which provides that questions of "inheritance and succession," and "matters of contract and dealing," shall be governed by Hindoo law when the parties are Hindoos, and by Mahomedan law when the parties are Mahomedans, it has been recently decided by the Supreme Courts at Calcutta and Madras that the limitations of the English law do not apply to them. It seems to be expedient to apply a definite and common rule to such cases, and it appears to us that the

Morton's Reports, p. 345.

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most fitting will be that which is to govern the like cases, and the like parties, in the courts of the East India Company.

By the English laws at present in force in Her Majesty's courts, and by the new laws proposed to be extended to them, the ordinary period of limitation for personal actions, or actions upon contracts, and for wrongs, in which parties are not Hindoos or Mahomedans, is six years, as proposed in our scheme for the majority of actions of the same description in the courts of the East India Company.

The personal actions proposed by us to be brought under the limitation of six years, for which a longer period is specially allowed by English law, are:

1. Actions of covenant or debt upon any bond or other specialty.
2. Of debt or *scire facias* upon any recognisance.
3. Of debt for arrearages of rent upon an indenture or demise.
4. For recovery of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land, or rent, or legacies.

We have thought it advisable to avoid the distinction of debts upon specialties not hitherto recognised by the laws administered in the Company's courts in the presidencies of Bengal and Madras, considering the general provision in our draft, whereby written acknowledgments will bar the limitation, to be sufficient and best suited to this country. We may here observe, that in England, at the time when the distinction in favour of specialties arose, almost every written instrument was under seal, and was a specialty. We are not aware that there is any serious objection to applying the limitation of six years to Her Majesty's courts, as well as to the Company's courts, with respect to the special causes of action above described, subject to the said general provision by which the period can be extended from time to time by agreement between the parties. With regard to the bonds which are in use among natives, it appears that the Supreme Court at Calcutta does not regard them as specialties, but as simple contracts only, because they are not under seal.

With respect to the actions upon contracts, and for wrongs to which by our scheme the limitation of one year is proposed to be applied, the limitation of the English law is various. With regard to the simple debts, which we propose to bring under this short limitation, the common limitation of six years applies; while for actions for assault, and other personal injuries, the period limited is four years, and for defamatory words, and for penalties or penal damages, two years.

Shorter periods of limitation are prescribed by particular statutes in respect of particular wrongs, of which any that may be in force in India might remain in force, under a provision similar to sect. 13 of our draft.

For the recovery of legacies, the longest period of limitation is allowed by the English law, as it is by our draft. If the maximum we have proposed is adopted, it will be 12 years instead of 20.

With respect to actions and suits for real property, the period of limitation prescribed by the stat. 3 & 4 Will. 4, c. 27, intended to be extended to Her Majesty's courts in India, is 20 years.

The stat. 2 & 3 Will. 4, c. 71, also intended to be extended, enacts that no claim to any right of common, or other profit, or benefit from, or upon any land which has been enjoyed by the claimant without interruption for 30 years, shall be defeated "by showing only that such right, or profit, or benefit, was first taken or enjoyed at any time prior to such period of 30 years;" and that when such right, profit, or benefit, shall have been enjoyed for 60 years, "the right thereto shall be deemed absolute and indefeasible," unless it was so enjoyed under a written agreement. This statute contains a similar provision regarding ways and other easements, water-courses, and water, with a difference in the periods of limitation, which are 20 and 40 years respectively.

We think it would be convenient that the period of uninterrupted enjoyment, which is to give a good title to these incorporeal hereditaments, should be the same as the period of adverse possession of corporeal hereditaments which is to bar the actions and the rights of all persons out of possession.

In regard to the limitation to be applied to suits relating to real property, it does not appear to us that the English law is recommended by any peculiar fitness to the state of such property in India; and when the law which is now observed in Her Majesty's courts is about to be modified, it seems to be deserving of consideration whether, instead of simply extending the late English statutes to them, it would

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would not be better to adopt the period of limitation which has been in force throughout the greater part of India from the first establishment of the Company's courts, if not to give a title by prescription, upon the ground of uninterrupted possession, for the same period, according to our scheme. Of this alternative, the latter course we think preferable, and seeing that the Act 3 & 4 Will. 4, c. 27, has gone the length of extinguishing the free-existing right and title when a suit has not been brought against the party in possession within the period of limitation, by which, practically, the possessor acquires an indefeasible right, for most purposes equivalent to a proprietory title; and considering that the reasons which led the Legislature to do so, must appear to require that a complete title should be created, we hope that Her Majesty's judges, whom your Lordship in Council will probably consult, will be disposed to concur with us, and if this principle be adopted with respect to immoveable property, we do not apprehend that there will be any objection to applying it also to moveable property.

A considerable difference between the scheme we have proposed, and the rules of the English law, will be found in the exceptions for disabilities. The period of 20 years, limited by the 3 & 4 Will. 4, c. 27, for actions relating to real property, is capable of enlargement in case of disability in the person first entitled to bring the action, but not beyond 40 years, and no further time is allowed for a succession of disabilities. The maximum period to which the ordinary time of prescription may be extended by our scheme is 30 years, which may include disabilities in successive parties. We take 18 years, the longest period of minority specified in the existing Regulations, as a standard for the extreme extension, which is only two years short of the extreme extension allowed by the English law. By allowing for disabilities in successive parties within the maximum period of 30 years, we think we provide better against occasional injustice, than if we allowed a maximum of 40 years in the case of a party being under a disability at the time when the cause of action arose, or according to our view when the title first accrued, but admitted of no further extension in the event of his being succeeded by a person also under a disability; as for example, a lunatic father succeeded by a minor or lunatic son. In such a case, under the English law, the limitation would run from the death of the father, and if that event occurred immediately after the right accrued to him, the right of the son, notwithstanding his disability, might be for ever lost by an adverse possession of little more than 20 years, whereas by our rule it could not be lost under such circumstances by an adverse possession of less than 30 years.

Another difference is, that we do not admit coverture as a disability; it appears to us to be unnecessary.

A further difference will be found in the exception on account of absence, which we put upon a distinct footing as a disability, depending more or less upon the will. We think we have made a sufficient allowance for this disability, under all ordinary circumstances, in permitting the periods of prescription to be extended for five years. We do not think it necessary to provide for successive disabilities by reason of absence.

According to our scheme, the same rules will govern the exceptions to be admitted in suits other than for immoveable property, but by the English law there appears to be no maximum period of limitation in respect of personal actions in cases of disability. It would seem that, however long the disability may have continued, the party who may have been prevented by it from bringing his action, is at liberty to sue at any time within the period of limitation after the cessation of such disability. We do not see reason for this distinction between actions for real property and other actions.

We are of opinion, that if the periods of limitation be made the same for suits in Her Majesty's courts and those of the East India Company, the rules regarding disabilities should be also assimilated; otherwise the desired object will be partly frustrated, and there will remain a discrepancy, which will be inconvenient. For instance, a party entitled to estates within and without the limits of any of Her Majesty's courts, might, with respect to the portion of his property situated without such limits, find his title extinct, while with respect to that situated within them it remained valid. Such incongruities we think it highly expedient to put an end to.

If after consulting Her Majesty's judges, your Lordship in Council should be of opinion that it is advisable to make the provisions of the draft Act herewith submitted, applicable to Her Majesty's courts, so far as we have recommended, we shall

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shall be prepared to modify and extend the draft accordingly, or to frame a separate Act for that purpose, as may appear to be most convenient.

We submit this our Report for the consideration of your Lordship in Council.

(signed) *A. Amos.* *D. Eliott.*
C. H. Cameron. *H. Borradaile.*
F. Millett.

India Law Commission,
26 February 1842.

AN ACT concerning the Acquirement and Extinction of Rights by Prescription, in the Territories subject to the Government of the East India Company, without the Local Jurisdiction of Her Majesty's Courts at Calcutta, Madras, and Bombay, and in the Straits Settlements; and for the Limitation of Suits in the Courts of the East India Company.

Legis. Cons. 21 March 1842. No. 27. Enclosure.

Prescription.

Sect. 1. It is hereby enacted, that, subject to the exceptions hereinafter mentioned, a title by prescription shall be acquired in respect of property, moveable and immoveable, and hereditary offices, by uninterrupted possession, mediate or immediate, as proprietor, for six years, in the case of moveable property, and for 12 years in the case of immoveable property and hereditary offices; provided that if any other title be proved, the possession shall have been adverse thereto; and provided that nothing herein contained shall be construed to affect any right arising from possession of moveable property now recognised by law.

Sect. 2. And it is hereby enacted, that in the case of any benefits, liberties, or privileges derived out of, or affecting any immoveable property which shall have been enjoyed without interruption for 12 years, a right to the enjoyment thereof against the owner of the property shall be acquired by prescription, subject to the exceptions hereinafter mentioned, unless such benefits, liberties, or privileges shall have been enjoyed by some consent or agreement expressly given or made for that purpose by some deed or writing.

Sect. 3. And it is hereby enacted, that when a right to any such benefits, liberties, or privileges as aforesaid, whether acquired by prescription or otherwise, shall have been disused for 12 years, the right shall be extinguished.

Sect. 4. And it is hereby enacted, that when a party shall have been forcibly dispossessed of immoveable property, or shall have been prevented from enjoying some benefit, liberty, or privilege derived out of, or affecting immoveable property, and shall have applied within the time limited by any law now in force, or within one month, to the proper authority for assistance to recover the possession or the use thereof, and shall have recovered the same, the period during which his possession or enjoyment was interrupted in such manner shall not be considered an interruption within the meaning of this Act.

Sect. 5. And it is hereby enacted, that when the possession upon which a title by prescription is claimed shall have been acquired by the deprivation of another party who was previously in possession, or in opposition to a title which had accrued, but upon which possession had not been taken, or having been taken had been previously interrupted, it shall be deemed adverse in respect of the party so deprived of possession, and of any one claiming in the same right, or in respect of the parties interested in the said title, as the case may be, from the time at which the possession actually commenced; and that when an adverse title shall have accrued after the possession was acquired, the possession shall be deemed adverse to the parties interested therein from the time at which such title accrued.

Sect. 6. And it is hereby enacted, that possession acquired by a *bonâ fide* purchaser for valuable consideration from a trustee, or from a depositary or mortgagee, shall be deemed adverse to the mortgagor or depositor, or beneficial owner under the trust, from the time of the acquisition by purchase.

Sect. 7. And it is hereby enacted, that a title by prescription shall be acquired by possession by or through a depositary or mortgagee which shall have continued without interruption for 30 years in the case of moveable property, and 60 years in the case of immoveable property, unless in the meantime an acknowledgement of the title of the mortgagor or depositor, or of his right of redemption, shall have been given to him or some person claiming his interest, in writing, signed by the mortgagee or depositary, or the person claiming through him, in which case prescription shall not take effect until possession shall have been had without interruption

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ruption for 30 or 60 years, as the property may be moveable or immoveable, from the date of such acknowledgment.

Sect. 8. And it is hereby enacted, that in the case of a concealed fraud by which a party shall have been deprived of any property, the possession thereof shall not be deemed adverse to the party entitled until the time at which such fraud shall, or with reasonable diligence might, have been first known by him, except when it shall have been acquired by a *bonâ fide* purchaser for a valuable consideration, or when a party shall have succeeded to it by inheritance or devise; in the former case, adverse possession shall be deemed to have commenced from the time that the party entitled was deprived of the property by means of such fraud; in the latter, from the time of the succession; provided it shall not appear that the party to whom the possession devolved assisted in the commission of the fraud, or at the time he entered into possession knew, or had reason to believe, that the fraud had been committed.

Sect. 9. And it is hereby enacted, that when a party having a right to any estate or interest in reversion or remainder shall have become entitled to the same in possession by reason of any forfeiture or breach of condition, but shall have waived his action to recover thereupon, possession shall not be deemed adverse to him, or any party claiming in the same right, until the determination of the previous right.

Limitation of suits.

Sect. 10. And it is hereby enacted, that suits other than for property and rights to which the above rules are applicable shall not be admitted in the courts of judicature of the East India Company, except as hereinafter provided, unless they are instituted respectively within the periods specified in the following section.

Sect. 11.—1st. Within one year from the time the cause of action arose:

Suits for penal damages or pecuniary penalties or forfeitures, for the breach of any law or regulation:

Suits for damages for injury to the person and personal property, or to the reputation:

Suits for debt for wages of servants, artizans, and labourers; for hire of animals and vehicles; for retail supplies of victuals and articles of daily consumption; for tavern bills and bills for board and lodging, and for lodging only; for the rent of buildings; and on any other account subject by established custom to settlement by the month, or a shorter period:

Suits to alter or set aside summary decisions or orders of the ordinary courts of judicature:

Suits to alter or set aside summary awards by collectors and other officers of revenue in disputes regarding arrears and exactions of rent:

Suits founded on the right of pre-emption in cases to be governed by a law or usage which recognises such right.

2d. Within six years from the time the cause of action arose:

All suits for debts and damages upon contracts, or for wrongs, other than are described in clause 1 of this section, and for the enforcement of contracts.

3d. Within 12 years from the time the cause of action arose:

Suits for the recovery of legacies.

Sect. 12. Provided, that suits against trustees shall not be barred by any length of time.

Sect. 13. And provided, that where by any law a shorter period is specially prescribed for the institution of a particular suit, the limitation so prescribed shall still be observed, notwithstanding this action.

Sect. 14.—1st. And it is hereby enacted, with respect to suits for the recovery of legacies and for debts, that if an acknowledgement shall have been made by the party liable within the period of limitation applicable to the case, either by writing, signed by him, or by part payment or part satisfaction on account of principal or interest due thereon, then a new period of limitation shall be reckoned, according to the nature of the case, from the date of such acknowledgment or payment or satisfaction.

2d. Provided, that if there be two or more parties liable, no one of them shall be chargeable by reason only of a written acknowledgment made or signed by any other.

Sect. 15. And it is hereby enacted, that in suits for balances upon accounts current between merchants and traders who have had mutual dealings, the period of limitation shall be computed from the close of the year in the accounts of which there

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there is the last entry indicating the continuance of mutual dealings, reckoning the year as it is reckoned in the accounts.

Sect. 16. And it is hereby enacted, that in suits for damages for wrong done by a concealed fraud, the cause of action shall be deemed to have first arisen at the time at which such fraud shall, or with reasonable diligence might, have been first known by the party wronged.

Sect. 17. And it is hereby enacted, that in computing the periods of prescription specified in sections 1 and 2, the time shall be excluded during which some party entitled to interrupt the possession or enjoyment shall have been under the disability of infancy, or unsoundness of mind, or shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, provided that no longer time than 18 years shall be excluded on account of any such disability, and no longer time than five years on account of such absence, and provided that the absence shall have been continuous from the time the title accrued.

Sect. 18. And it is hereby enacted, that in computing the period of prescription specified in section 1 in the case of moveable property, the time shall be excluded during which the party in possession shall have been absent out of the territories of the East India Company.

Sect. 19. And it is hereby enacted, that in computing the periods of prescription specified in sections 1 and 2, the time shall be excluded during which any suit brought *bonâ fide* to interrupt the possession shall have been pending, and shall have been diligently prosecuted in any court of judicature, which, from defect of jurisdiction, or other cause, shall have been unable to decide upon it, or shall have passed a decision which shall have been annulled on appeal for such cause.

Sect. 20. And it is hereby enacted, that the provision of section 3 shall not have effect when the party entitled to use the benefits, liberties, or privileges therein referred to shall have been under any of the disabilities specified in section 17, except as subject to the provisions contained in that section.

Sect. 21. And it is hereby enacted, that in computing the periods of limitation specified in section 11, the time shall be excluded during which the claimant, or any person through whom he claims, shall have been under the disability of infancy or unsoundness of mind; provided, in respect of the suits described in clauses 2 and 3 of the said section, that no longer time than 18 years shall be so excluded; and in respect of the suits specified in clause 1 of the same section, excepting suits for penal damages, that no longer time than five years shall be so excluded; provided further, that suits for penal damages shall never be admitted after the expiration of one year.

Sect. 22. And it is hereby enacted, that in all suits described in section 11, except suits for penal damages, when the claimant, or the person through whom he claims, shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, at the time the cause of action arose, and shall have continued so absent, the time of such continued absence shall be excluded in computing the prescribed period of limitation, provided that no longer time than five years shall be so excluded.

Sect. 23. And it is hereby enacted, that in all suits described in section 11, the time during which the defendant shall have been absent out of the territories of the East India Company shall be excluded in computing the prescribed period of limitation.

Sect. 24. And it is hereby enacted, that in computing the period of limitation applicable to any case, the time shall be excluded during which the claimant, or the person through whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same party, or some party whom he represents, *bonâ fide* and with due diligence, in any court of judicature, which from defect of jurisdiction, or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause.

Sect. 25. And it is hereby enacted, that when by the provisions of this Act a person is barred from bringing a suit for the recovery of any legacy, debt, or damages, his right to the legacy, debt, or damages, for which a suit might have been brought by him but for those provisions, shall be extinguished unless such right is secured by some mortgage, pledge, or lien.

Sect. 26. And it is hereby enacted, that no complaint or information shall be proceeded upon by any magistrate or justice of the peace against any person for any

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any offence punishable by fine only, or by any officer of revenue against any person liable to any penalty or forfeiture, unless such complaint or information shall have been received within one year from the commission of the act charged, or within any shorter period that may be prescribed by any existing law for preferring such complaint or information.

Sect. 27. And it is hereby provided, that this Act shall not be construed to affect the provisions of Section 10, Regulation XIX. 1793, extended to Cuttack by Section 24, Regulation XII. 1805, Section 10, Regulation XLI. 1795, and Section 6, Regulation XXXI. 1803; extended to the territories ceded by Dowlut Rao Scindiah and the Peishwah by Section 21, Regulation VIII. 1805, of the Bengal Code.

Sect. 28. And it is hereby provided, that this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue, or for any public claim whatever.

Sect. 29. And it is hereby enacted, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed.

Sect. 30. And it is hereby enacted, that the provisions of this Act concerning the acquisition and extinction of rights shall not be of force in respect of any property situated or being within the local jurisdiction of Her Majesty's supreme courts at Calcutta, Madras, and Bombay, and of the Recorder's court in the Straits of Malacca, and that the rules of limitation contained in this Act shall not be applied to any suits or actions in those courts.

Fort William, Legislative Department, the 21st March 1842.

Legis. Cons. 21 March 1842. No. 28.

THE following Draft of a proposed Act was read in Council for the first time on the 21st March 1842.

ACT, No. —— of 1842.

AN Act concerning the Acquirement and Extinction of Rights by Prescription in the Territories subject to the Government of the East India Company, without the Local Jurisdiction of Her Majesty's Courts at Calcutta, Madras, and Bombay, and in the Straits Settlements; and for the Limitation of Suits in the Courts of the East India Company.

Prescription.

Sect. 1. It is hereby enacted, that, subject to the exceptions hereinafter mentioned, a title by prescription shall be acquired in respect of property, moveable and immoveable, and hereditary offices, by uninterrupted possession, mediate or immediate, as proprietor, for six years, in the case of moveable property, and for 12 years in the case of immoveable property and hereditary offices; provided that if any other title be proved, the possession shall have been adverse thereto; and provided that nothing herein contained shall be construed to affect any right arising from possession of moveable property now recognised by law.

Sect. 2. And it is hereby enacted, that in the case of any benefits, liberties, or privileges, derived out of, or affecting any immoveable property which shall have been enjoyed without interruption for 12 years, a right to the enjoyment thereof against the owner of the property shall be acquired by prescription, subject to the exceptions hereinafter mentioned, unless such benefits, liberties, or privileges, shall have been enjoyed by some consent or agreement expressly given or made for that purpose by some deed or writing.

Sect. 3. And it is hereby enacted, that when a right to any such benefits, liberties, or privileges as aforesaid, whether acquired by prescription or otherwise, shall have been disused for 12 years, the right shall be extinguished.

Sect. 4. And it is hereby enacted, that when a party shall have been forcibly dispossessed of immoveable property, or shall have been prevented from enjoying some benefit, liberty, or privilege derived out of or affecting immoveable property, and shall have applied within the time limited by any law now in force, or within one month, to the proper authority for assistance to recover the possession or the use thereof, and shall have recovered the same, the period during which his possession or enjoyment was interrupted in such manner shall not be considered an interruption within the meaning of this Act.

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Sect. 5. And it is hereby enacted, that when the possession upon which a title by prescription is claimed shall have been acquired by the deprivation of another party who was previously in possession, or in opposition to a title which had accrued, but upon which possession had not been taken, or having been taken had been previously interrupted, it shall be deemed adverse in respect of the party so deprived of possession, and of any one claiming in the same right, or in respect of the parties interested in the said title, as the case may be, from the time at which the possession actually commenced; and that when an adverse title shall have accrued after the possession was acquired, the possession shall be deemed adverse to the parties interested therein from the time at which such title accrued.

Sect. 6. And it is hereby enacted, that possession acquired by a *bonâ fide* purchaser for valuable consideration from a trustee, or from a depositary or mortgagee, shall be deemed adverse to the mortgagor or depositor, or beneficial owner under the trust, from the time of the acquisition by purchase.

Sect. 7. And it is hereby enacted, that a title by prescription shall be acquired by possession by or through a depositary or mortgagee, which shall have continued without interruption for 30 years in the case of moveable property, and 60 years in the case of immoveable property, unless in the meantime an acknowledgment of the title of the mortgagor or depositor, or of his right of redemption, shall have been given to him, or some person claiming his interest, in writing, signed by the mortgagee or depositary, or the person claiming through him, in which case prescription shall not take effect until possession shall have been had without interruption for 30 or 60 years, as the property may be moveable or immoveable, from the date of such acknowledgment.

Sect. 8. And it is hereby enacted, that in the case of a concealed fraud by which a party shall have been deprived of any property, the possession thereof shall not be deemed adverse to the party entitled until the time at which such fraud shall, or with reasonable diligence might, have been first known by him, except when it shall have been acquired by a *bonâ fide* purchaser for a valuable consideration, or when a party shall have succeeded to it by inheritance or devise; in the former case, adverse possession shall be deemed to have commenced from the time that the party entitled was deprived of the property by means of such fraud; in the latter, from the time of the succession; provided it shall not appear that the party to whom the possession devolved assisted in the commission of the fraud, or at the time he entered into possession knew, or had reason to believe, that the fraud had been committed.

Sect. 9. And it is hereby enacted, that when a party having a right to any estate or interest in reversion or remainder shall have become entitled to the same in possession by reason of any forfeiture or breach of condition, but shall have waived his action to recover thereupon, possession shall not be deemed adverse to him, or any party claiming in the same right, until the determination of the previous right.

Limitation of suits.

Sect. 10. And it is hereby enacted, that suits other than for property and rights to which the above rules are applicable shall not be admitted in the courts of judicature of the East India Company, except as hereinafter provided, unless they are instituted respectively within the period specified in the following section.

Sect. 11.—1st. Within one year from the time the cause of action arose:

Suits for penal damages or pecuniary penalties or forfeitures, for the breach of any law or regulation:

Suits for damage for injury to the person and personal property, or to the reputation:

Suits for debt, on account of wages of servants, artizans, and labourers; for hire of animals and vehicles; for retail supplies of victuals and articles of daily consumption; for tavern bills and bills for board and lodging, and for lodging only; for the rent of building; and on any other account subject by established custom to settlement by the month, or a shorter period:

Suits to alter or set aside summary decisions or orders of the ordinary courts of judicature:

Suits to alter or set aside summary awards by collectors and other officers of revenue in disputes regarding arrears and exactions of rent:

Suits founded on the right of pre-emption in cases to be governed by a law or usage which recognises such right.

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2d. Within six years from the time the cause of action arose:
All suits for debts and damages upon contracts, or for wrongs, other than are described in clause 1 of this section, and for the enforcement of contracts.

3d. Within 12 years from the time the cause of action arose:
Suits for the recovery of legacies.

Sect. 12. Provided, that suits against trustees shall not be barred by any length of time.

Sect. 13. And provided, that where by any law a shorter period is specially prescribed for the institution of a particular suit, the limitation so prescribed shall still be observed, notwithstanding this Act.

Sect. 14.—1st. And it is hereby enacted, with respect to suits for the recovery of legacies and for debts, that if an acknowledgment shall have been made by the party liable within the period of limitation applicable to the case, either by writing signed by him, or by part payment or part satisfaction on account of principal or interest due thereon, then a new period of limitation shall be reckoned, according to the nature of the case, from the date of such acknowledgment or payment or satisfaction.

2d. Provided, that if there be two or more parties liable, no one of them shall be chargeable by reason only of a written acknowledgment made or signed by any other.

Sect. 15. And it is hereby enacted, that in suits for balances upon accounts current between merchants and traders who have had mutual dealings, the period of limitation shall be computed from the close of the year in the accounts of which there is the last entry indicating the continuance of mutual dealings, reckoning the year as it is reckoned in the accounts.

Sect. 16. And it is hereby enacted, that in suits for damages for wrong done by a concealed fraud, the cause of action shall be deemed to have first arisen at the time at which such fraud shall, or with reasonable diligence might, have been first known by the party wronged.

Sect. 17. And it is hereby enacted, that in computing the periods of prescription specified in sections 1 and 2, the time shall be excluded during which some party entitled to interrupt the possession or enjoyment shall have been under the disability of infancy, or unsoundness of mind, or shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, provided that no longer time than 18 years shall be excluded on account of any such disability, and no longer time than five years on account of such absence, and provided that the absence shall have been continuous from the time the title accrued.

Sect. 18. And it is hereby enacted, that in computing the period of prescription specified in section 1, in the case of moveable property, the time shall be excluded during which the party in possession shall have been absent out of the territories of the East India Company.

Sect. 19. And it is hereby enacted, that in computing the periods of prescription specified in sections 1 and 2, the time shall be excluded, during which any suit brought *bonâ fide* to interrupt the possession shall have been pending, and shall have been diligently prosecuted in any court of judicature, which, from defect of jurisdiction, or other cause, shall have been unable to decide upon it, or shall have passed a decision which shall have been annulled on appeal for any such cause.

Sect. 20. And it is hereby enacted, that the provision of section 3 shall not have effect when the party entitled to use the benefits, liberties, or privileges therein referred to, shall have been under any of the disabilities specified in section 17, except as subject to the provisions contained in that section.

Sect. 21. And it is hereby enacted, that in computing the periods of limitation specified in section 11 the time shall be excluded during which the claimant, or any person through whom he claims, shall have been under the disability of infancy or unsoundness of mind; provided, in respect of the suits described in clauses 2 or 3 of the said section, that no longer time than 18 years shall be so excluded; and in respect of the suits specified in clause 1 of the same section, excepting suits for penal damages, that no longer time than five years shall be so excluded; provided further, that suits for penal damages shall never be admitted after the expiration of one year.

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Sect. 22. And it is hereby enacted, that in all suits described in section 11, except suits for penal damages, when the claimant, or the person through whom he claims, shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, at the time the cause of action arose, and shall have continued so absent, the time of such continued absence shall be excluded in computing the prescribed period of limitation, provided that no longer time than five years shall be so excluded.

Sect. 23. And it is hereby enacted, that in all suits described in section 11, the time during which the defendant shall have been absent out of the territories of the East India Company shall be excluded in computing the prescribed period of limitation.

Sect. 24. And it is hereby enacted, that in computing the period of limitation applicable to any case, the time shall be excluded during which the claimant, or the person through whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same party, or some party whom he represents, *bonâ fide* and with due diligence, in any court of judicature, which, from defect of jurisdiction, or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause.

Sect. 25. And it is hereby enacted, that when by the provisions of this Act a person is barred from bringing a suit for the recovery of any legacy, debt, or damages, his right to the legacy, debt, or damages, for which a suit might have been brought by him but for those provisions, shall be extinguished unless such right is secured by some mortgage, pledge, or lien.

Sect. 26. And it is hereby enacted, that no complaint or information shall be proceeded upon by any magistrate or justice of the peace against any person for any offence punishable by fine only, or by any officer of revenue against any person liable to any penalty or forfeiture, unless such complaint or information shall have been received within one year from the commission of the act charged, or within any shorter period that may be prescribed by any existing law for preferring such complaint or information.

Sect. 27. And it is hereby provided, that this Act shall not be construed to affect the provisions of Section 10, Regulation XIX. 1793, extended to Cuttack by Section 24, Regulation XII. 1805, Section 10, Regulation XLI. 1795, and Section 6, Regulation XXXI. 1803, extended to the territories ceded by Dowlut Rao Scindiah and the Peishwah by Section 21, Regulation VIII. 1805, of the Bengal Code.

Sect. 28. And it is hereby provided, that this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue, or for any public claim whatever.

Sect. 29. And it is hereby enacted, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed.

Sect. 30. And it is hereby enacted, that the provisions of this Act concerning the acquisition and extinction of rights shall not be of force in respect of any property situated or being within the local jurisdisction of Her Majesty's supreme courts at Calcutta, Madras, and Bombay, and of the Recorder's court in the Straits of Malacca, and that the rules of limitation contained in this Act shall not be applied to any suits or actions in those courts.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council after the 21st day of June next.

(signed) *T. H. Maddock,*
Secretary to the Government of India.

Legis. Cons. 21 March 1842. No. 29.

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to Secretaries Governments of Bengal, North West Provinces, Madras, and Bombay, and Government Straits Settlements, and Officiating Advocate-general.

Sir,

I AM directed to transmit to you, for submission to the , the accompanying Report from the Law Commissioners, dated the 26th February last, on the

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Government Straits Settlements.

Your.

Act for amending the law with respect to the limitation of suits, together with draft of an Act submitted by the Commissioners on the acquirement and extinction of rights by prescription in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's courts at Calcutta, Madras, and Bombay, and on the Straits settlements, and for the limitation of suits in the courts of the East India Company, and to request that *the* opinions *of the Sudder Court*, and of any other officer competent to advise on the subject discussed together, with that of *his Honor*, may be submitted for the consideration of the Supreme Government.

2. With the view of distributing the Report and Act, copies of each are forwarded.

I have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to Government of India.

Fort William,
21 March 1842.

Legis. Cons. 21 March 1842. No. 30.

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to the Honourable the Judges of the Supreme Courts at Calcutta, Madras, and Bombay.

Honourable Sirs,

Legis. Dep.

We have the honour to forward to you the accompanying Report, dated the 26 February last, submitted by the Law Commissioners, on the proposed Act for amending the law with respect to the limitation of suits, together with an Act concerning the acquirement and extinction of rights by prescription in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's courts at Calcutta, Madras, and Bombay, and in the Straits settlements, and for the limitation of suits in the courts of the East India Company, referred to by the Commissioners, and will feel obliged by any observations or suggestions you may offer on the subject.

We have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to the Government of India.

Fort William,
21 March 1842.

(No. 752.)

Legis. Cons. 5 Aug. 1842. No. 9.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. F. Halliday*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dep. (No. 34.)

In compliance with the requisition conveyed by your letter, dated the 21st March last, I am directed by the Hon. the Deputy-governor of Bengal, to transmit, for the information of the Supreme Government, the accompanying copy of a letter* from the register of the Court of Sudder Dewanny Adawlut.

* No. 2067 of 17th inst.

No reply has yet been received to the letter which was addressed to the secretary to the Sudder Board of Revenue on the same subject.

I have, &c.
(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

Fort William,
20 June 1842.

(No. 2067.)

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and J. F. M. Reid, Esqrs. Judges.

From *J. Hawkins*, Esq. Register, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

I am directed by the court to acknowledge the receipt of your letter, No. 601, of the 16th ultimo, and to state, for the information of the Honourable the Deputy-governor,

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governor, that they have no particular remarks to offer regarding the proposed Act concerning limitations, which they consider well calculated to meet the objects in view.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William,
17 June 1842.

(True copy.)

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 3 of 1842.)

(No. 1633.)

From the Secretary to the Government of Bombay to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India in the Legislative Department.

Legis. Cons. 5 Aug. 1842. No. 10. Judicial Dep.

Sir,

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 21st of March last, No. 86, with its enclosures, and in reply, to transmit to you, for submission to the Honourable the President in Council, copy of a letter from the register of the Sudder Dewanny Adawlut, dated the 15th instant, submitting the opinion of the judges of that court on the proposed Act for amending the law in respect to the limitation of suits, and concerning the acquirement and extinction of rights by prescription in the territories subject to the courts of the East India Company without the local jurisdiction of Her Majesty's courts.

Submits the opinion of the Sudder Judges on the Act for amending the law in respect to the limitation of suits, and concerning the acquirement and extinction of rights by prescription in the territories subject to the Company without the local jurisdiction of Her Majesty's courts.

2. I am at the same time instructed to observe, that your letter now acknowledged, bearing date the 21st of March, was received in Bombay on the 20th of May. The Governor in Council has thought it necessary to notice this circumstance in consequence of the 21st of last month having been fixed for the reconsideration of the proposed Act.

I have, &c.
(signed) *J. P. Willoughby*,
Secretary to Government.

Bombay Castle,
20 July 1842.

From the Register of the Sudder Dewanny Adawlut to the Secretary to the Government, Judicial Department, Bombay.

Legis. Cons. 5 Aug. 1842. No. 11. Enclosure.

Sir,

I AM directed to acknowledge the receipt of your letter, dated 23d May last, No. 1166, and accompaniments, forwarding for the opinion of the judges a draft of a proposed Act for amending the law in respect to the limitation of suits, and concerning the acquirement and extinction of rights by prescription in the territories subject to the courts of the East India Company.

Present: A. Bell, G. Giberne, Jno. Pyne, Esqrs.

2. In reply, the judges instruct me to state that they are of opinion the draft Act submitted is far preferable to that dated the 5th April 1841, and transmitted for their observations, with your letter of the 26th of that month, and they have no objection to offer to any of its provisions, with the exception of limitation of one year from the date of communication, prescribed in section 26, within which it is necessary complaint or information should be lodged against those liable, to enable a revenue officer to take cognizance of the same. Hereditary officers, such as patells, coolcurnies, and district zemindars, are sometimes guilty of great misconduct, as concealment or misappropriation of land revenue, and neglect of duty, &c., for which they are rendered liable by the Bombay Regulations to the forfeiture of their wuttuns, or hereditary rights; such offences it is believed are not unfrequently brought to light after the expiration of a year; and by the provisions of this section these offenders will in all such cases escape punishment, and the penal provisions of sections 17 and 23 of Regulation XVI. of 1827 will become injuriously imperative.

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3. I am likewise desired to observe, that the repeal of the existing law is not provided for in the draft Act.

I have, &c.

Bombay, Sudder Dewanny Adawlut, 15 July 1842.

(signed) *W. H. Harrison,* Register.

(True copy.)

(signed) *J. P. Willoughby,* Secretary to Government.

Legis. Cons. 5 Aug. 1842. No. 12.

From the Honourable the Chief Justice of the Supreme Court, Fort William, to the Honourable the President of the Council of India in Council.

Honourable Sirs,

I HAVE the honour to lay before you some observations on the changes which the Law Commissioners have recommended for adoption in the law of prescription and limitation of suits, as it is now administered in the supreme courts of this presidency, and at Madras.

The enactment of a positive prescription, and the mere alteration of the periods of limitation of suits, would in my opinion disturb in so slight a degree the general conformity of the law as administered here to the law of England, that I think no objection arises to the recommendations of the Law Commissioners on that ground.

I should have considered 12 years too short a period for establishing a prescriptive right, or for the limitation of suits, had it not been so long in existence, apparently without objection or inconvenience; and the obvious advantages of the same period prevailing within the local limits of the jurisdiction of the Supreme Court which prevails without those limits, induce me to concur in the recommendation of the Law Commissioners to abridge the period of limitation as to immoveable property.

The enactment of a limitation in favour of the heir, or devise of a fraudulent trustee, appears to me to be objectionable. It might operate as an inducement to a trustee to violate the trust reposed in him, and on the ground of convenience, as well as of justice, I think the claims of the defrauded cestuique trusts most entitled to consideration.

It is necessary, in my opinion, to make a distinction as to the period of limitation upon acquisitions by concealed frauds between such acquisitions of goods and chattels and similar acquisitions of immoveable property. In both cases the party defrauded may for a while be kept in ignorance of the fraud; but if the fraud be committed with respect to moveables, the defrauded person may, though acquainted with the fraud, remain in ignorance of the actual possession and locality of the goods. If he subsequently discover the possession of them, he may recover them, or their value, from the possessor, unless that person has acquired a title to them, which by the law as it now exists can rarely be, unless by a sale in market overt. The limitation of the suit against such a party should date, as it appears to me, from the discovery of the possession, and not from the discovery of the fraud, nor from the time of the possessor's acquisition. The remedy of the defrauded or deprived person against the actual wrongdoers might not be worth pursuing, and he might even be in ignorance of the persons. It is proper that he should have a right to pursue the goods, but I should be glad to see it limited to the pursuit against persons not *bonâ fide* purchasers for valuable consideration without notice. The law already gives full protection to a purchaser *bonâ fide* for valuable consideration, and without notice in the case of a transfer of immoveable property. The common law contemplated that a similar purchaser of goods and chattels should enjoy a like protection, but the limitation to a sale in market overt renders in modern times this protection precarious and narrow.

I think the period of six years too short as a period of limitation in the case of specialties, and that the limitation in those cases should be the longest period of limitation, viz. 12 years. If it be thought necessary to have a conformity of limitation in the case of suits in respect of specialties upon simple contracts, I should prefer an extension of the time in the latter case to 12 years to an abridgement of the time in the former case to six years. In the cases of a judgment of a mortgage deed, with a covenant for the payment of the mortgage money and interest, and of a common money bond, whether accompanied with a warrant of attorney

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to confess judgment or otherwise, all of which are in daily use as securities for money, the repayment of which is not immediately contemplated, so short a period of limitation would be found very inconvenient. In the case of the mortgage, the lender might lose one of his remedies, whilst no presumption whatever arose of the satisfaction of the debt, and if the mortgaged property proved insufficient in value he would be remediless; in the case of the judgment, no presumption whatever of any payment would in fact arise; and whilst it might be kept alive for the purposes of execution, it would be unavailable for the purposes of suit; and in the case of the common money bond, it would also lose much of its value as a security from the necessity of resorting within a few years for new security to an embarrassed and perhaps fraudulent debtor. As the limitation would commence if the debtor were once within the jurisdiction after the debt existed, and would continue to run notwithstanding his absence, there would be frequently no means whereby a creditor could obtain a fresh security or acknowledgment, and it might not be in his power to institute a suit so as to keep his claim alive against his debtor.

I see no sufficient reason for an exception from the general period of limitation in the case of suits for wages and hire, or in that of suits for the recovery of supplies and accommodation furnished in the expectation of prompt payment, and usually discharged monthly or at shorter periods. This provision is comprehensive enough to embrace a great number of cases in which the limitation of one year would be found too short.

I have, &c.

Supreme Court House,
11 July 1842.

(signed) *Lawrence Peel*,
Chief Justice.

From the Hon. Sir *J. P. Grant*, Knt. Puisne Judge, Fort William, to the Hon. the Vice-President of the Council of India in Council.

Legis. Cons. 5 Aug. 1842. No. 13.

Honourable Sirs,

The judges received from the Legislative Council, some considerable time ago, the draft of an Act then depending in Council for amending the law with respect to the limitation of suits and summary proceedings, whereby it was meant to extend to cases within the jurisdiction of Her Majesty's courts, to be determined according to the laws of England, the Act 2 & 3 Gul. 4, c. 71, for shortening the time of prescription in certain cases, and the Acts 3 & 4 Gul. 4, c. 27, and 3 & 4 Gul. 4, c. 42, or parts thereof, accompanied by a letter, dated 5th April 1841, desiring our opinion regarding the passing of that Act.

I delivered to the then chief justice, Sir Edward Ryan, in order to its forming part of the answer from the judges then proposed to be prepared by the chief justice and transmitted to the Legislative Council, my opinion that there was no objection to the extending these enactments in cases within the English law and under our jurisdiction, observing upon some parts of the draft Act, which in my opinion were not conformable to the English statute, or required some alteration to suit the circumstances of India. What the circumstances were which induced the chief justice to delay communicating to the Legislative Council the opinions of the judges upon this proposed Act I am not aware, but I believe no such letter was drawn up. It is probable that he knew of its being in contemplation to substitute a different Act for that then proposed.

I considered the opinion desired by the Legislative Council upon this occasion one which it was the duty of the judges, when so desired, to give, being in truth nothing else than an opinion, which it is the business of the judges judicially to form and announce upon many existing Acts of Parliament, viz. whether, assuming, as they are bound to assume, that an Act passed by the British Legislature is a just and politic Act, to operate in England, and it forming a part of the law of England at the time the English law was introduced within the new jurisdiction of the King's courts in India, there is anything in the circumstances as regards persons and things within the jurisdiction of these courts which renders that law inapplicable here, and thereby creates a presumption in law that the Legislature did not intend it to extend to this settlement; so in regard to the projected Act for extending to this and the other jurisdictions of Her Majesty's supreme courts the Acts 2 & 3 and 3 & 4 Gul. 4, above-mentioned, we were, in my opinion, bound to assume that these enactments are just and politic generally as an amend-

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ment of the laws of England, where those laws prevail, and the opinion demanded of us by the Legislative Council appeared to me to be, whether there was anything in the circumstances here which, if known to Parliament, would have induced them to abstain from extending it to our jurisdiction, or the contrary. I was of opinion that there was no ground for presuming that Parliament, if its attention had been turned to India, would not have extended that Act to our jurisdiction; and I considered it to be my duty to give this to the Legislative Council as my judicial opinion.

I have now received, in common with the other judges, a printed draft of an Act concerning the acquirement and extinction of rights by prescription in the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty's courts, &c., accompanied by a printed copy of a letter to the Governor-general in Council from the members of the Law Commission, under date 26th February 1842. The draft of the Act above mentioned appears to have been read in Council for the first time on the 21st March 1842. These papers are accompanied by a letter to the judges from the Governor-general in Council, stating that they will feel obliged by any observations or suggestions we may offer on the subject.

The opinion which it is desired that I should give upon the present occasion is of a very different description from that which was desired of me upon the last occasion.

Presuming that the questions which the Legislative Council desire to be answered by the judges are those suggested by the Law Commissioners, it appears that it is thought by those learned persons to be very desirable that the periods of limitation, or negative prescription, as they term it, should be the same both for causes subject to the jurisdiction of Her Majesty's courts, and for causes subject to the jurisdiction of the courts of the East India Company throughout the British territories in India, especially in respect of the allowance to be made for disabilities; that in actions in which Hindoos or Mahomedans are parties, it is expedient to apply a definite and common rule in Her Majesty's courts and those of the East India Company, and that the most fitting will be that which is to govern the like cases and the like parties in the courts of the East India Company; and it appears that the learned Commissioners propose to introduce periods of limitation, or, as they express themselves, of negative prescription, extending as well to British subjects and others subject to the jurisdiction of Her Majesty's courts, and to the territory within the limits of the presidencies, as to persons and territories beyond that jurisdiction, varying most materially, and in a great variety of instances, from the periods known to the laws of England as they now stand, with amendments under the Acts of King William 4, which appeared to Parliament to be sufficient amendments of the laws of England in these respects, and with equally material variations from the English laws so amended in the exceptions they propose for disabilities. They express a hope that Her Majesty's judges will be disposed to concur with them; and they say, that if after consulting Her Majesty's judges the Governor-general in Council shall be of opinion that it is advisable to make the provisions of the draft Act submitted applicable to Her Majesty's courts, so far as they the Commissioners have recommended, they will be prepared to modify and extend the draft accordingly, or to frame a separate Act for that purpose, as may appear to be most convenient.

The question, therefore, upon which my opinion is demanded is this: whether Acts recently passed by Parliament, upon the suggestion and with the entire concurrence of the great law officers of the Crown, after mature deliberation, are fit and proper laws to have been rendered part of the laws of England, or whether they are not imperfect and require alteration and amendment? I cannot think that it is within the limits of my duty, as one of Her Majesty's judges in this colony, to give a judicial or public opinion upon this matter, still less can I think it within my duty so to pronounce an opinion that these Acts of Parliament are in any respect unfit and improper to form part of that law, or framed with so little attention to what is expedient as to require material alterations and amendments.

If I were inclined to entertain such opinion I should do so with great hesitation and doubt, as having no such confidence in my own knowledge and ability as to put them in the balance against such authority, nor should I venture, if I occupied a legislative instead of a judicial station, to recommend in opposition to that authority, the carrying the reforms introduced to a certain extent by those laws further than Parliament has gone, because I might think that the principle upon which these reforms

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reforms are made might justify the so doing, for I have always considered it the highest mark of legislative wisdom rather to leave reforms in the law short of apparent perfection, than at once to deviate too widely from what has been established in its practice for a great length of time.

But upon matters which concern the policy of laws which have been made or are proposed to be made, I consider it not to be within my province to enter; I may, however, be permitted to say, that the laws which Her Majesty's court here is commanded by its charter to administer, are the laws of England as administered by the Court of Queen's Bench in England, in matters of common law; and the equity administered by the High Court of Chancery there in matters of equity; and that it would, therefore, appear advisable when changes are introduced into the law or equity administered by those courts in England, that the same changes should be introduced in the law or equity administered by Her Majesty's courts here, unless there be circumstances existing in this settlement which make any of these changes inapplicable to the condition here of those of Her Majesty's subjects who have come here believing that they were to live under the law of England, and the jurisdiction of a court administering that law.

An English merchant or tradesman coming out to such a settlement must be supposed generally acquainted with the laws of England as they affect matters coming within the ordinary scope of his transactions, and it must be attended with great inconvenience and embarrassment, and risk of loss to him, to find the law passing under the name of the law of England as he left it behind him, and this more especially, if the difference be in parts of the law which, like those the learned Law Commissioners propose to deal with, govern the permanence and security of all his rights, and all property of every description.

These inconveniences must be increased by the additional difficulty imposed upon the lawyers who are to be consulted, and the judges who are to decide upon the transactions affecting those rights, if these persons are to find on their arrival here that they have to make themselves acquainted with a new law concerning transactions and rights among persons living in other respects under the law of England, differing from that law as it exists in England. The differences introduced in any particular matter may be so few and simple, that the actual amount of the difficulty supposed may in that particular matter be small, but the principle appears to me to be the same, that the law of England is one system of law, the parts of which hang together; not indeed a system framed upon speculative opinions regarding the principles which ought to govern the transactions of men, but a system which has grown up with those transactions and adjusted itself to their nature and extent; and it must be believed that the great law officers of the Crown were well acquainted with that system and the practical operation of all its parts, engaged in the stirring business of the courts before whom actual transactions of every description are daily brought for discussion and adjudication; and the members of the legislature, acting under the control of the opinions of the land-owners, merchants, and tradesmen of England, will not introduce alterations in the law conflicting with the practical working of the system in any of its parts, or if any should fall upon occasion into such an error, that it will not be corrected after no great lapse of time, under the influence of public opinion in matters in which all those influential classes of the society have so deep an interest. Neither do I think that in the present state of public opinion in England, there is any reason to apprehend that reforms in the law will not be carried far enough by Parliament; perhaps I may rather lean to the belief that men inclined to moderate change and gradual melioration are in danger of being impelled upon a course of supposed reformation, further and more rapidly than their judgments approve. It cannot, I think, be in any case advisable, in a settlement where the law of England is the law, to outstrip the Parliament of England in the reformation of English law.

There is a further consideration upon this matter which appears to me of great importance. Scarcely any law has ever been made, and, I believe, none embracing subjects of great extent and detail, which has been found in practice so framed as that its terms have been free from uncertainty in many circumstances to which it has been necessary to apply it. To frame such a law, seems beyond the power of the human intellect, and it is only by the decisions of courts of justice that laws of any considerable extent in their operation ever acquire certainty. It is therefore of great importance that the courts whose decisions are to fix the interpretation, should be those of the greatest learning and authority, and the most extensive

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acquaintance with the variety of cases to which in practice the law falls to be applied. The judges of Her Majesty's courts in India, most properly consider the decisions of the Courts of Westminster Hall binding upon them; but if a law be passed in India affecting matters to be governed generally by the law of England, which differs materially from the law of England upon such matters, not only will the Queen's courts in India be left without the advantage of those guides in these matters, but the means of preserving an uniformity in the law will be thrown away as regards the decisions of the Queen's courts in India, who having no guide of acknowledged paramount authority, must pronounce their decisions upon the probably varying opinions of their judges, till in the course of time the practice of each particular court shall be settled by what shall be considered a course of precedents.

It is for the Legislative Council to consider whether this is a state of the law which is desirable in any matter, and whether there are not considerations which render it peculiarly undesirable upon so extensive and complicated a matter as the fixing the nature and length of the possession, and of the abstinence from enforcing a right, and the precise circumstances in various cases affecting either, which shall respectively confer upon the possession of any of the various subjects of property, servitude, inheritance, pledge, an exemption from any investigation of the title upon which such possession was acquired, although demanded by one asserting a proprietary right, or shall exclude from the assertion of each particular variety of the multifarious rights arising from the relations and dealings of mankind, every person claiming such right, although he should be otherwise indisputably entitled. My duty is confined to the stating to the Legislative Council the inconveniences which, in my opinion, would attend such a state of the law in the practice of the court in which I have the honour to sit, and I humbly think that these inconveniences, resulting from the law applicable to English cases here, being different from the law of England, ought not to be incurred unless under the pressure of some strong necessity, arising from a difference in the circumstances which Englishmen are placed in here and in England.

The vicinity of the territory more immediately under the jurisdiction of Her Majesty's Supreme Court, to territory subject to a different jurisdiction and to different rules for the decision of its courts, does not appear to me to constitute any such necessity, or even any motive for incurring these inconveniences, neither am I acquainted with any other circumstance which does so; but I think there are two classes of cases in which it would be convenient, unless the suggestion I am about to offer be adopted, in the last of them, that the law of prescription in our court should be the same with that of the mofussil, and in which the inconvenience I have last mentioned would not arise, nor would the other objections apply to them: I mean in rights concerning immoveable property in the mofussil, in whomsoever vested, and in the prosecution of all rights where Mahomedans or Hindoos shall be the parties; unless it shall be thought more advisable to extend to these classes within our jurisdiction the English law, as regards prescription and limitation of suits and actions, as it now stands under the above-mentioned statute of Gul. 4, in place of the Hindoo and Mussulman laws of prescription.

Their own laws are preserved to these classes in suits and actions in Her Majesty's courts, in cases of inheritance and contract and dealing with one another. There is little if any difference in matters of contract and dealing between their laws and the law of England, except in regard to prescription and the limitation of actions, which must in all countries be matter of positive institution by the municipal law. It humbly appears to me that it would be attended with great convenience to the administration of justice in Her Majesty's courts if this distinction in matters of contract and dealing between the laws affecting these two classes, and other classes of persons subject to their jurisdiction in the manner I have mentioned were removed.

All questions regarding immoveable property are, according to the general principle of law, everywhere decided by the laws of the country where the property is situated, and I see no reason why the case of British subjects, as they are designated, having, or pretending to have, rights concerning immoveable property in the provinces of India, should be subject to a different rule.

I do not observe that it is desired of me to express any opinion upon the policy of the law proposed to be introduced into the mofussil, nor indeed do I think I could do so without impropriety; and having stated the grounds upon which I am humbly of opinion that no law differing from the Acts of Parliament can be introduced

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introduced within the jurisdiction of her Majesty's courts without inconvenience, it is unnecessary that I should offer an opinion upon any of the enactments of the law proposed by the learned Commissioners; I have only to request that my abstaining from so doing may not be construed to infer an assent to its policy in all its parts.

I have, &c.
(signed) *J. P. Grant.*

Supreme Court House,
11 July 1842.

Legis. Cons.
5 Aug. 1842.
No. 14.

From the Hon. Sir *H. W. Seton*, Knt. Puisne Judge, Fort William, to the Hon. the President of the Council of India in Council.

Honourable Sirs,

As a general principle, I think that where any alteration is intended to be introduced in the law administered by the Supreme Court, in consequence of a similar alteration in the law of England, it is advisable that it should be effected by extending the Act of Parliament by which the alteration is made to this country, either simply, or with such modifications as may be required, rather than by re-enacting it here in an altered shape. By this means, the benefit of the decisions at home upon the construction of it will be obtained, and the uniformity of the law administered in the Supreme Court and the courts in England preserved. But, on the other hand, I think that the uniformity between the practice of the Supreme Court and the courts of the East India Company, particularly in a matter of such general importance as that of limitation, is equally desirable; and, as both are not to be attained, ought in this instance to be preferred.

I concur, therefore, with the Commissioners in thinking that the periods of limitation and allowance for disabilities should be the same in both courts; and in order to give full effect to this principle, should suggest that the period of the minority of Hindoos should be made the same in the Supreme Court as in the Company's courts. It has already been done in the case of Mahomedans, and was long ago recommended by Sir E. East. (*See* his Minute, Report of H. of L. 1830, page 138, an abstract of which is subjoined.) I concur in all the observations of the chief justice.

I have, &c.
(signed) *H. W. Seton.*

Supreme Court House,
11 July 1842.

Extract referred to.

"A Hindoo minor attains his full age, and the entire possession of his property, at 16. It is easy to believe, and the fact is notorious, that at this early age the possession of wealth, within his immediate power of disposal, attracts about him a swarm of necessitous and greedy dependents and profligate associates, bent upon the spoliation and waste of his substance. The government long ago became conscious of this evil; and have, I believe, in part rectified it, by a Regulation extending the period of minority to 18 in the mofussil, but in Calcutta the old rule remains in force. This always appeared to me a grievous defect."

Legis. Cons.
5 Aug. 1842.
No. 15.

From the Honourable the Judges of the Supreme Court at Madras, to the Honourable *W. W. Bird*, President of the Council of India, Fort William, dated Madras, the 4th June 1842.

Honourable Sir,

We have the honour to acknowledge the receipt of your letter of the 21st March last, accompanied by a Report of the Law Commissioners on the proposed Act for amending the law with respect to limitation of suits, together with an Act concerning the acquirement and extinction of rights by prescription, and for the limitation of suits.

There are only two provisions in the proposed Act, as to the propriety of which we are disposed to entertain any doubts.

1. The first is the limitation in respect of suits for the recovery of legacies. The Law Commissioners have fixed a more extended period in this case than in others, because legatees may often remain in ignorance of the bequests made to them.

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them. We cannot concur with them in thinking that this is a sufficient reason for establishing a limitation of 12 years rather than one of a shorter period. The time at which it is most probable that a legatee will become acquainted with a bequest made in his favour, is the time when he first hears of the testator's decease, or shortly afterwards. If he does not then hear of his legacy, the probability of his being informed of it in any succeeding year, is not an increasing, but in general a diminishing probability. It is only in cases where the legatee is out of the country, or where the place of his abode is unknown, that length of time affords a greater chance of the information being communicated to him, and for this purpose 12 years must surely be deemed a period of unnecessary length.

We are disposed to think that the limitation in respect to suits for legacies, instead of commencing at the time when the right of action accrues, should rather have reference to the legatee's receiving notice of the bequest. It will then become in some measure the interest of the executor to convey such information. If he can withhold it (and the Commissioners very justly remark, that executors are under no obligation to seek legatees out) and can afterwards take advantage of his omission by pleading the Act of Limitations, it may then happan that an executor who has kept a yearly account in his books of an unpaid legacy, and of the interest due upon it, will be able, as soon as the twelfth year is completed, to close the account and put the proceeds of it into his own pocket; as the Act is now framed, nothing short of proving a fraudulent concealment on the part of the executor will enable a legatee to prevent this defence being successfully pleaded.

We think it will be best to provide against the occurrence of cases of this description by giving executors an inducement to apprize legatees of the benefits to which they are entitled; and we therefore venture to suggest that instead of the limitation now proposed in respect of suits for legacies, all such suits should be instituted within years from the time the plaintiff had notice that a present right to receive such legacy had accrued to him; we leave the number of years in blank, because we are not able to make any positive recommendation as to the period which ought to be established. But we are inclined to think that six years would be sufficient for this purpose.

2. We have some doubts as to the expediency of the enactment, in section 8 of the proposed Act, in favour of a party succeeding by inheritance or devise. Upon principle, we think he ought not to be put in a better situation than the ancestor or testator under whom he claims. The proviso in the latter part of this section, and which is necessarily imported into it in consequence of the effect thus given to the Act of succession, is one which appears to us likely to give rise to a great deal of litigation; and this affords, in our judgment, an additional reason for omitting altogether the clause which gives so great an advantage to an heir or devisee.

We beg, in conclusion, to observe, that we think it highly desirable that the periods of limitation, and also the rules regarding disablities, should be the same within the jurisdiction of Her Majesty's courts as within that of the courts of the East India Company.

We have, &c.
(signed) *Edward J. Gambier.*
John W. Norton.

Legis. Cons.
5 Aug. 1842.
No. 16.

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary Indian Law Commission.

Sir,

Legis. Dep.

With reference to the report, dated the 26th February 1842, submitted by the Law Commissioners on the proposed Act for amending the law with respect to the limitation of suits, I am directed by the Honourable the President in Council to transmit to you, for their information, copies of opinions submitted by the following authorities, viz.: Chief Justice, Supreme Court, Calcutta, dated 11 July; Sir J. P. Grant, dated 11 July; Sir H. W. Seton, dated 11 July; Judges Supreme Court at Madras, dated 4 June; Judges Sudder Adawlut of Bombay, in their registrar's letter, dated 15 July 1842; Judges Sudder Dewanny Adawlut of Calcutta, in their registrar's letter, dated 17 June 1842.

I have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary Government of India.

Council Chamber,
5 August 1842.

No. 1.

Legis. Cons. 11 Nov. 1842. No. 13.

From *C. R. Prinsep*, Esq. Officiating Advocate-general, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, dated 10 October 1842.

Sir,

I HAVE the honour to return herewith my reply to the reference made to me by yours, under date the 21st March last, transmitting the report and draft Act of the Law Commissioners relative to the limitation of suits.

The numerous references made from the different offices of government during the period of my officiating as Advocate-general, will, I hope, be a sufficient excuse for the delay that has intervened between the reference and this my reply.

I have, &c.

(signed) *C. R. Prinsep*,
Officiating Advocate-general.

Opinion.

Legis. Cons. 11 Nov. 1842. No. 14. Enclosure.

IN calling for my opinion on this report and draft Act of the Law Commission, I presume that the government meant my attention to be drawn principally to the concluding passages of the report, wherein is suggested the propriety of extending the proposed innovations to Her Majesty's courts, and to property within their local jurisdiction, that being a matter on which I might be supposed to be better able to give an opinion than upon their application to the rest of the Company's territory, and to property and persons subject to the Company's courts. To that recommendation, therefore, I shall in great measure confine the remarks that occur to me on the matters of the report and draft Act in question.

That the uniformity of the law on this, and all other points throughout the Company's territories, and its general applicability to the inhabitants of all classes, is a most desirable object, no one will deny; the only subject of doubt is, the best mode of attaining that desirable end; whether by assimilating or approximating the law of these territories to the law prevalent in the paramount state, and its other dependencies, or by establishing for them, and within them, a general law distinct and different from that of the paramount state, and subjecting all classes alike to its provisions. The Law Commission has recommended the latter course, which is obviously but one step towards uniformity; for it will not be disputed, that uniformity of law throughout this portion only of the empire is a secondary benefit to uniformity throughout the empire at large; and that, until the latter shall be despaired of, the former is not the true object to be aimed at. It is to be presumed, that the Law Commission thought it hopeless to aim at the more extensive benefit, and therefore contented themselves with the more limited one. I think they have despaired without cause, and that there would be even less of difficulty in the introduction of the English rules of legal limitation and prescription *in toto*, than in the establishment of the rules proposed in this report and draft now before me. Not that I would hold up the English rules as the wisest of all rules; but that whatever objections they may be liable to, are greatly overbalanced by the great and obvious benefits of general uniformity; and I confess it seems to me that general uniformity in this particular with the rest of the empire may be obtained, not only without injustice or inconvenience, but with more ease and advantage to all parties concerned, than the local uniformity aimed at by the report and draft of the Law Commission. If so, there can be no question as to the propriety of preferring the former to the latter, and thus avoiding the anomaly of isolating the Indian territories of Great Britain in this important point of jurisprudence, and that, too, while avowedly aiming at uniformity. I will briefly state the reasons that have brought me to this conviction.

The remark of the Law Commission on the English period of limitation for real property, "that it does not appear to be recommended by peculiar fitness to the state of such property in India," is scarcely correct, for the reasons hereafter given, but might have been applied with greater justice to the period of 12 years adopted by the Commission from the Regulations of Bengal and Madras, as the period of limitation for property of the same description throughout British India. When first introduced by Regulation, and applied equally to real and personal property, it was great innovation upon the law of the majority (Hindoo), which had fixed 20 years for realty and 10 years for personalty; so that, while the period of the former was abridged, that for the latter was prolonged. In Bombay, as noticed in the report, the new period of 12 years was found much too short, and so late as 1823 was extended to 30 years. Thus, it is not even now

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the general rule for the Company's territories; and as to personalty, the Law Commissioners' recommendation of the shorter period of six years only has condemned it as inexpedient. Their recommendation, therefore, would introduce into all three presidencies a great innovation as to one of the two grand divisions of property, and into one of them (Bombay) as to personalty also.

It appears to me worthy of serious consideration, whether, on the eve of such extensive innovation, it would not be better to adopt at once the English period of 20 years for realty, as well as that of six years for personalty, and thereby at once to assimilate the law on this head throughout this portion of the empire, with that prevalent in the paramount state, and generally throughout the colonial possessions of Great Britain. The following reasons may be stated for adopting this course, in preference to that suggested by the Law Commission; to me they appear quite convincing.

1st. By no other expedient will general uniformity on this point be attained; for it is not to be supposed that the Legislature of Great Britain, or of any of its colonies, will look to that of India for a model. The paramount legislature will alone be regarded; and, though the periods and rules of limitation it has laid down may not be the best that could have been chosen, they are certainly not inferior in respect of convenience or of equity to those of the Regulation Law of India, so far as realty is concerned, and are admitted to be preferable in respect of personalty, by the recommendation of the Law Commission itself.

2d. There may be inexpediency in extending the period of legal limitation; there can be no injustice, for it is only allowing a man longer time to claim his own. In shortening the period there often is great injustice, for it deprives parties of rights without notice, as in the case of absentees, who may reckon on the continuance of the law existing at the time of their departure; or in the case of infant heirs and legatees, whose ancestors or testators may have done so. None could with reason complain of the extension from 12 to 20 years, as to realty; many might have just cause to complain of the reduction of limitation, as to personalty, from twelve to six years, and even to shorter periods in some particular matters.

3d. The period of 20 years as to realty is that expressly prescribed by Hindoo law, and still regarded with reverence by the great majority of the population. To the Mahomedan it is a matter of indifference, for Mahomedan law appears to admit of no period of limitation to claims. Thus the English period is peculiarly fitted to a community of Hindoos.

4th. The term of 20 years exceeds the full period of one minority, whether of a Hindoo (16 years) or of a Mahomedan (17 for females, 18 for males). This is a point that should always be looked to, for otherwise, the extra time allowed for claims after attaining majority becomes unequal, and may be even cut down to nothing. It is true that it has been disregarded in the English period of 20 years, but that has been justly regarded as a blemish, and many have thought and think, as I do, that 20 years is too short a period. Having been once adopted, however, it is better to adhere to it for the sake of uniformity, though beyond all doubt it makes a longer allowance of time for claim necessary, after the legal disability of infancy has ceased.

5th. It is difficult to assign any reason why limitation as to realty should be stricter in India than in Europe. Habits of procrastination are more general and inverate in the East than in the West; communications far less frequent, often wholly cut off, and the range of territory to which the proposed local rule of limitation is to apply is infinitely greater than all the British isles together. The Law Commission itself has admitted the necessity of extending the period of limitation in the case of mortgage or deposit, to no less than five times the ordinary periods, although suits by the mortgagee, &c. for recovery of money are somewhat inconsistently limited to six years; by which arrangement the creditor will be compelled to retain in his hands a redeemable, and, therefore, often an unsaleable property, for 24 years, if personalty, and 48 years, if realty.

For the above reasons, I take the liberty of suggesting, that instead of applying the innovation recommended by the Law Commissioners to property within the jurisdiction of Her Majesty's courts, the rules of limitation prevailing in England should be adopted in regard to real as well as personal property, and thus an important step be made towards general uniformity of the laws of the empire at large, at the expense of innovations, certainly not more violent, and, as it seems to me, more just and equitable than those suggested by the report and draft Act submitted to me.

Should

Should the government concur in this view of the matter, it will follow almost of course that such deviations from the English rules and exceptions as have been suggested by the Law Commission must, for the most part, be abandoned, else the object of uniformity would hardly be attained. Fortunately few, if any, of those deviations are of sufficient importance to cause any hesitation, and some do not appear to me to be improvements; for instance, the distinction between positive and negative prescription seems to me to be little better than a verbal distinction. A title founded on mere adverse possession will always, in the estimation of mankind, be a mere negative title, *i. e.* based on the inability of the rightful claimant to recover his own by legal process, and therefore very different from a title that can be traced to a legal origin. The disallowance of coverture is a disability exempting from limitation, and would, in the case of Christian females (or any but Hindoo and Mahomedan), be a positive denial of justice, so long as the law shall leave them under incapacity to sue: it is not now a ground of disability or exemption in Mahomedan or Hindoo females, who may hold property independent of their husbands, and sue and be sued alone. Again, the exemption contained in sections 19 and 24 of the draft Act seems hardly warranted by principles of justice. A claimant who prefers his claim to an incompetent tribunal is surely not more deserving than one that prefers it defectively to a competent one and fails to recover. Nor, for my part, can I see the policy of putting on the same footing of limitation claims founded on deeds of mortgage, bonds, and other formal instruments, known as specialties in English law, and those founded upon mere verbal transactions. In the one class there is a documentary and lasting evidence, in the other not; and one of the chief motives, or rather excuses for legislative interference in the way of limitation, which is at best one act of injustice in nine cases out of ten, is to afford relief from the loss of evidence or its uncertainty. Such specialty securities are indeed, for the most part, unknown to a great proportion of the Company's subjects; but those who resort to them usually do so from a wish to secure to themselves the legal advantages incident to them, amongst which permanency is the principal. One more point only I will remark upon, and that is the provision contained in section 28 of the draft Act, abolishing all limitation whatever in respect of public property or rights, or suits for recovery of revenue, or for any public claim whatever. It has been the boast of recent English legislation, that on the matter of limitation it has laboured to put limits to the claims of the Crown; it is strange to find a contrary course taken for the advantage of a delegated authority.

I have not thought it necessary to go through the proposed deviations from the existing English rules of limitation, item by item. It appears sufficient to note some of the most prominent, by way of exemplifying how little is to be gained by the proposed departure from uniformity in the details. Having stated above my reasons for questioning the policy, and even justice of adopting in the gross an independent plan and scale of limitation for British India, I have only to conclude with the hope that, whenever extensive alterations in the law of limitation shall be resolved upon, the opportunity may not be lost of approximating, in this important particular, the institutions of this part of the empire to those of the paramount state, and of all its British dependencies. The more the matter is examined the easier it will appear to effect this change; which, in fact, would be neither violent in degree, nor repugnant to the principles, or even prejudices, of any important class of the population.

(signed) *C. R. Prinsep*,
Officiating Advocate-General.

10 October 1842.

(No. 86.)

From *F. J. Halliday*, Esq. Officiating Secretary to Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 11 Nov. 1842. No. 15.

Sir,

I AM directed by the Honourable the President in Council, to transmit to you for submission to the Law Commissioners, in continuation of my letter No. 82, dated the 28th ultimo, the accompanying copies of a letter and opinion submitted by the officiating Advocate-general, in the report and draft of Act relative to the limitation of suits.

Legis. Dep.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to Government of India.

Council Chamber,
11 November 1842.

— No. 2. —

ABOLISHING THE RECORDER'S COURT IN THE STRAITS.

No. 2. Abolishing the Recorder's Court in the Straits.

(No. 60.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council in the General Department, under date the 8th June 1836.

Legis. Cons. 22 Jan. 1838. No. 1.

READ again the under-mentioned Papers:

Public General Letter, No. 66 of 1831, from the Honourable Court of Directors, dated the 27th of July, relative to the Charter for the Administration of Justice at Prince of Wales' Island, Singapore, and Malacca, and the powers of the resident and deputy resident.

Letter from the Secretary to the Governor-general, dated the 21st December 1831.

Letter to the Advocate-general, dated the 10th January 1832.

Letter from the Advocate-general, dated the 9th February 1832.

Letter to the Resident at Singapore, dated the 14th February 1832.

Public General Letter, No. 61 of 1832, dated the 8th August, conveying instructions respecting the Recorder's Court expenses.

Letter to the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 15th January 1833.

Read a letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 22d December 1834, with statements exhibiting the receipts and disbursements attendant on his Majesty's Court of Judicature in the Straits, during the years 1832–33 and 1833–34.

Read a letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 28th July 1835, with the original papers addressed to him by Sir Benjamin Malkin on the close of his official connexion with the Straits government, which he conceives likely to prove useful to the legislative authorities in the preparation of new Regulations, and in framing a new charter of justice for the settlements.

Read a letter from the Secretary to the Government of Bengal to the Secretary to the Government of India, dated the 2d September 1835, submitting the above-mentioned papers for the consideration of the legislative authorities.

Order.

Ordered, That the above-mentioned papers be transferred to the Legislative Department of the government of India, in which various questions referring to his Majesty's courts at the different presidencies are now under consideration.

(True extract.)

(signed) *H. T. Prinsep,*
Secretary to Government.

PUBLIC DEPARTMENT, No. 66 of 1831.

Our Governor-general in Council at Fort William in Bengal.

Legis. Cons. 22 Jan. 1838. No. 2. Enclosure.

Para. 1. IN our despatch, dated the 23d of February last, we intimated an intention of obtaining a new charter for the administration of justice at Prince of Wales' Island, Singapore, and Malacca, and you were at the same time apprised that Mr. Fullerton was "mistaken in supposing that the alteration in the government could cause the present charter to become inoperative."

Para. 2, sent to the Advocate-general on the 10th Jan. 1832.

2. We have now to acquaint you that, upon further consideration, it has been deemed expedient to continue the old charter for the present; and in order that all doubt may be removed regarding the powers, under that charter, of the resident and deputy residents, we have determined and hereby declare that, for the purpose of administering justice under his Majesty's charter, the resident at Singapore stands, and that the resident at Singapore for the time being shall stand, appointed and designated governor or president of the united settlements of Prince of Wales' Island,

No. 2.
Abolishing the Recorder's Court in the Straits.

Island, Singapore, and Malacca; and that the first assistant to the said resident at Singapore stands, and that the first assistant for the time being to the resident at Singapore shall stand, appointed and designated as resident councillor at Singapore; and that the deputy residents at Prince of Wales' Island and Malacca stand, and the deputy residents at Prince of Wales' Island and Malacca for the time being shall stand, appointed and designated as resident councillors at those places respectively.

We are, &c.

(signed) *Robert Campbell.* *J. L. Lushington.*
John G. Ravenshaw. *John Loch.*
John Morris. *C. Mills.*
H. Shank. *Wm. Young.*
Geo. Lyall. *Wm. Stanley Clarke.*
London, *John Forbes.* *J. Thornhill.*
27 July 1831. *G. Raickes.* *J. Petty Muspratt.*

(No. 1.)

From *H. T. Prinsep*, Esq. Secretary to the Governor-general, to *G. A. Bushby*, Esq. Officiating Secretary to Government, Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 764, dated the 6th instant,* forwarding a public general letter, No. 66 of 1831, from the Honourable the Court of Directors, and in reply, to state his Lordship's opinion that the orders contained in that despatch should be communicated immediately to the resident at Singapore, and to the other officers concerned, and be otherwise promulgated for general information.

General Department.
* Financial.

2. The Governor-general further conceives that it will be proper to take the opinion of the law officers of this government as to the course of proceeding to be adopted by the local officers of the Eastern settlements under the new appointments conferred upon them by the Honourable Court, in order to provide for the administration of justice therein under the existing charter.

Camp Putundee, I have, &c.
21 December 1831. (signed) *H. T. Prinsep*,
Secretary to the Governor-general.

From *G. A. Bushby*, Esq. Secretary to the Government of India, to the Advocate-General.

Sir,

I AM directed by the Honourable the Vice-president in Council to transmit for your information the accompanying extract from a despatch in the Public Department from the Honourable the Court of Directors, bearing date the 27th of July last, and to request that you will at as early a period as possible advise this government as to the course of proceeding to be adopted by the local officers of the Eastern settlements under the appointments conferred upon them by the Honourable Court, in order to provide for the administration of justice therein according to the existing charter.

Para. 2.

I have, &c.
Fort William, (signed) *G. A. Bushby*,
10 January 1832. Secretary to Government.

From *John Pearson*, Esq. Advocate-General, to *G. A. Bushby*, Esq. Secretary to the Government.

Sir,

I HAVE the honour to acknowledge the receipt of your letter and enclosure relative to the administration of justice in the Eastern settlements.

2. I conceive that it is competent to the Court of Directors to limit or lessen the power of the governor or president in other respects, without affecting his judicial functions under the charter of justice. I would apply the same remark to the other officers mentioned in the letter of the Court of Directors. Upon a suppossion, then,

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then, that the different places, Prince of Wales' Island, Malacca, and Singapore, are under the same governor, and that the government (whatever may be its powers) is administered by the persons now termed governor and resident councillors—(For the reasons of my attaching importance to these circumstances, see Charter of Justice, page 8.)—I think that the court of judicature may resume its office and act in the same manner as after the recall of the recorder, and before the change which took place antecedently to the departure of Mr. Fullerton. I presume, however, they will usually retain in other matters the same titles they are authorized to assume in the court of justice. Without attaching any undue importance to names, a contrary practice would, it is probable, lead to disputes and difficulties. I need not add, that as it is the law of England which is to be administered by the court, it is of importance, in the absence of a professional judge, to proceed with great caution in all cases of importance.

I have, &c.

Fort William,
9 February 1832.

(signed) *John Pearson*,
Advocate-general.

From *G. A. Bushby*, Esq. Secretary to Government, to *R. Ibbetson*, Esq. Resident at Singapore, dated the 4th February 1832.

Sir,

I AM directed by the Honourable the Vice-president in Council to transmit for your information the accompanying copy of a public general letter, dated the 27th of July 1831, from the Honourable the Court of Directors, intimating that it has been deemed expedient to continue for the present the Charter of 1826, for the administration of justice at Prince of Wales' Island, Singapore, and Malacca, and for the purpose of administering justice under the same, appointing the resident at Singapore for the time being governor or resident of the united settlement of Prince of Wales' Island, Singapore, and Malacca, and the first assistant for the time being to the resident at Singapore, councillor at Singapore, and the deputy resident at Prince of Wales' Island and Malacca for the time being, resident councillors at those places respectively.

2. You are requested to communicate these appointments to the several officers concerned, and otherwise to promulgate them for general information throughout the settlements in the Straits.

3. The Advocate-general having been consulted as to the course of proceeding to be adopted by the local officers for carrying into effect the objects of their new appointments, I am directed to transmit a copy of Mr. Pearson's letter upon the subject, dated the 9th instant, for your information and guidance.

I have, &c.

(signed) *G. A. Bushby*,
Secretary to Government.

PUBLIC DEPARTMENT, No. 61 of 1832.

Our Governor-general in Council at Fort William in Bengal.

Para. 1. UPON the occasion of a new appointment to the office of recorder of Prince of Wales' Island, Singapore, and Malacca, we think it expedient to issue specific instructions with respect to his circuit expenses, being very desirous of avoiding the recurrence of the mischievous discussions which took place between the late recorder and the local government.

2. We desire that the expenses incurred under each of the following heads be defrayed by the government, viz:—

Suitable accommodation in a vessel to be taken up by the resident;
Tonnage for private baggage, public records, and official books;
Accommodation for servants, public and private;
Batta to servants, public and private;
Chambers or lodgings suitable for the temporary residence of the recorder, containing every article of furniture except plate and linen; and
All expenses incidental to the shipping and landing baggage.

3. The personal and private expenses of the recorder and his table expenses on board and on shore during circuit are to be borne by himself.

4. The

No. 2.
Abolishing the Recorder's Court in the Straits.

4. The recorder's clerk is to be paid the same salary as was paid to the clerk of the late recorder.

We are, &c.

(signed) *John G. Ravenshaw.* *Robert Campbell.*
C. Marjoribanks. *H. Shanks.*
J. Morris. *H. St. George Tucker.*
W. Astell. *J. R. Carnac.*
John Masterman. *J. L. Lushington.*
J. Baillie. *N. B. Edmondstone.*
Russell Ellice.

London,
8 August 1832.

From *G. A. Bushby*, Esq. Officiating Secretary to Government, to *R. Ibbetson*, Esq. Governor of Prince of Wales' Island, Singapore, and Malacca.

Sir,

I am directed to transmit for your information and guidance the accompanying extract from a public general letter, No. 61 of 1832, from the Honourable the Court of Directors, dated the 8th August last, regulating the circuit expenses of the recorder of Prince of Wales' Island, Singapore, and Malacca, and directing payment of the same salary to the present recorder's clerk as was paid to the clerk of the late recorder.

Public Department. Para. 1 to 4.

I have, &c.

(signed) *G. A. Bushby,*
Officiating Secretary to Government.

Fort William,
15 January 1833.

(No. 47.)

From *S. G. Bonham*, Esq. Acting Governor, Prince of Wales' Island, &c. to *H. T. Prinsep*, Esq. Secretary to Government, Fort William.

Sir,

Adverting to my letter of 21st October, No. 22, wherein I promised to prepare and submit, for the information of Government, the expenses attendant on his Majesty's court of judicature in these Straits, I have now the honour to enclose a document exhibiting the receipts and disbursements during the years 1832–33, and 1833–34, the one exhibiting a loss to government of *Rs.* 61,699, and the other of *Rs.* 1,16,313. 15 *a.* 8 *p.*

General Department.

No. 1.

2. The difference in the expense for the two years is to be accounted principally by the office of recorder being vacant during the greater part of 1832–33, Sir Benjamin Malkin having only arrived on the 15th of February 1833; so that deducting his pay and establishment, included under the head of 1832–33, and the circuit charges for the same period, two months and a half, amounting to *Rs.* 10,076. 8 *a.* 7 *p.*, it would appear that the court charges for these settlements, without the recorder, would be *Rs.* 51,923. 6 *a.*; I conceive, however, that these charges would be susceptible of some reduction, which I have submitted in a comparative statement, marked (A.)

(A.)

3. Comparing the expenses of the two years, it will be seen that the surplus charge for 1833–34, with the recorder present, aggregated *Rs.* 1,16,313.; to which must be added the court charges paid at the close of 1832–33, as had the recorder not been present they certainly would not have been incurred; they amount to *Rs.* 4,585. 12 *a.* 3 *p.*; but as it is necessary the registrar should accompany the court, I would put his and the governor's extra expenses for the circuit at *Rs.* 1,500; so that deducting this sum from the expenses absolutely incurred, the result is a dead loss of *Rs.* 1,19,399. 11 *a.* 11 *p.*

4. The amount fairly to be debited, on account of the presence of the recorder, appears to be:

His salary - - - - - - - - - *Rs.*	37,890	–	–
His establishment - - - - - - - - -	4,392	–	–
Circuit charges incurred at the close of 1832, being on account of circuits of 1833/34 - - - - - - - -	4,585	12	3
Ditto - - - ditto - - - ditto - - - ditto -	25,047	13	5
Carried forward - - -	71,915	9	8

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Abolishing the Recorder's Court in the Straits.

Brought forward - - -	*Rs.*			71,915	9 8
Mr. Ibbetson's circuit expenses, incurred for the first circuit, cost government nothing; but doubtless some addition must be made to the governor's establishment if he is to perform circuit; say, each trip as follows:					
Governor's passage and contingencies -	*Rs.*	800	– –		
Registrar's ditto - - ditto - - -		400	– –		
Other contingent charges - - -		800	– –		
	Rs.	2,000	– –		
For two circuits, amount to - - -	*Rs.*	4,000	– –		
Add establishment clerk, at *Rs.* 200. - -		2,400	– –		
Three peons, at 12 each, *Rs.* 36. - -		432	– –		
				6,832	– –
			Rs.	65,083	9 8

5. Independent of the expense, however, there are many reasons which make the law of England unmodified, and administered as it must be by an English lawyer, inapplicable at these stations. In criminal matters, I fully admit, but little improvement can take place; but in civil ones, and the documents enclosed, marked (B.) and (C.), will, I think, fully prove that I have had some experience, I conceive that there is room for great improvement, especially when administered by the recorder; because he cannot, nor from his peculiar education can it be expected he will, see the necessity of modifying the law of England to circumstances. In these past ten years I have known four recorders, so that they can have hardly time to make themselves at all acquainted with the prejudices and characters of the inhabitants frequenting these settlements. It may, indeed, be said, that such knowledge is not necessary for the pure administration of justice; but from this I must beg to dissent, because in civil cases the judge not being assisted by a jury has to find the fact himself, to do which, with any certainty, a knowledge of the language, character, and prejudices of the parties before him is by no means unnecessary, more especially as without it the evidence must be conveyed through at least one, and in many instances more interpreters, who, being aware that they are not likely to be detected, are apt to interpret somewhat carelessly.

(B.) and (C.)

6. In corroboration of this opinion I will simply quote one instance: I have already, in a letter of 15th May last, recommended that the gaming farms should be reinstated. It is not necessary here to discuss whether it is advisable that the restrictions should be reimposed, but let it be presumed that the Right honourable the Governor-general of India in Council is of opinion that it is advisable they should be, and issue orders that the gaming farms should be put on their old footing, can these orders be carried into effect so long as the court exists in its present shape, bound to punish and abate all matters deemed offences in the English Statute-book, in which gaming is clearly included? Perhaps, however, the extensive powers now vested in the Supreme Government of India, in its legislative capacity, may obviate this and other inconveniences; heretofore it certainly had not the power, and the result would have been that, had the Regulation been passed after due consideration by the highest power in this country, or by any other less than an express Act of Parliament, it would not have been recognised by our court, or be carried into execution; though it is needless to add, the reasons that may have induced the Legislature to prevent gaming in England by no means extend to these distant and, I may nearly say, semi-barbarous stations.

7. From the above remarks it will be gathered, as my opinion, that justice, civil and criminal, ought to be administered in these straits on a scale less expensive than the present; and with this view, in my capacity as a judge of the court, and by that means having access to the documents, I have compiled the Statements (B.) & (C.), setting forth what has been done in the civil and criminal side of the court for the years 1832–33, and 1833–34; the date of its last coming again into operation, as also before whom the causes have been disposed of. The results are as follows: Amount litigated, $ 521,521; of which $. 289,228 were disposed of before the lay judge, and $. 232,293 before the recorder; criminal cases tried,

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Abolishing the Recorder's Court in the Straits.

tried, 205; of which 16 were disposed of at Singapore and 47 at Penang before the lay judges, and the remainder before the lay judges and recorder. The papers to which I have at present access do not show before whom the criminal cases were disposed of at Malacca.

8. Mr. Fullerton, than whom few could be better qualified, both from experience and talent, fully discussed the merits of the question in a council, at which the Right honourable the Governor-general in Council presided; and as his Minute contains all that I can say, and will doubtless be considered of more weight than anything I might say, I beg to enclose it for reference. An extract of a minute by the Right honourable Lord William Bentinck is also appended, who it will be seen fully concurred with Mr. Fullerton on the subject.

Mr. Fullerton's Minute, dated 1 Feb. 1829, with a *P. S.* dated 11 March following.

Governor-general's Minute, 17 March 1829.

9. To assist the Right honourable the Governor-general of India in Council in forming a judgment of the necessity of a professional judge being stationed in the Straits, and the consequent expense, I would observe, that since October 1824, say 10 years, the court has been carried on without one for four years and six months, or nearly half the time; viz. from the decease of Sir Francis Bayley to the arrival of Sir John Claridge, from Sir John Claridge's recall until the abolition of the late government, and from the reopening of the court until the arrival of the present recorder; and as I was one of the judges appointed under the charter at the opening of the court in 1832, I can safely assert, as far as Singapore was concerned, no difficulty was experienced, though the court had extremely heavy calendars of prisoners to try, and a great weight of civil business to dispose of, the accumulation of 22 months, the time the court was in abeyance.

From the end of Oct. 1824 to Sept. 1827, say	35 m^ths^.
Sept. 1829 to June 1830	9 „
April 1832 to Feb. 1833	10 „
	12) 54 „
	Years 4 6 „

10. Should what I have had the honour to submit induce the Supreme Government of India to conclude that the presence of the recorder is not necessary, and that his salary and other expenses incidental on his presence might be saved to the state, then I would suggest that on the removal of the present recorder to another bench, or the appointment becoming vacant, that it should not be again filled up, and the judicial business of these stations should be carried on by the governor and resident councillor in the way it was during the vacancy of the office alluded to in the last paragraph, by which measure no necessity exists for the repeal or modification in the present letters patent.

See printed copy of Charter, pp. 13 and 55.

11. As however there can be no doubt that the presence of a professional judge is desirable (but in my opinion by no means absolutely essential, provided efficient and qualified servants are nominated to the office of governor and resident councillor), I would suggest, should it be in contemplation to modify the present charter, that provision should be made for one of the judges of the Calcutta bench being allowed to visit the Straits, and take his seat on the bench, on the same footing as the recorder does at present, once a year, or as often as might be thought desirable by government. This would enable the lay judges in cases of difficulty to await his arrival, by which means nearly the same professional assistance would be obtainable as at present, and with the aid of a steam-vessel, might be effected at perhaps 10,000 to 12,000 rupees, instead of 65,083 rupees, as under the present system.

12. On the other hand, if it is deemed proper that a system of judicature similar to the present, the most perfect and expensive that could be devised, giving the inhabitants, both European and native, the privileges and immunities enjoyed by our fellow-subjects in England, which the latter certainly neither require nor comprehend, should be continued, then it appears to me the system that is pursued at the presidencies should be adopted here, and that a tax or duty on the trade should be immediately imposed. At present the European inhabitants absolutely pay no tax whatever for the protection they receive, except on the consumption of spirituous liquors if bought in retail; a state of things for which I confess I see no good cause, more especially when it is remembered that during last year the expenditure on account of these settlements over the receipts amounted to 8,32,273 sicca rupees. This subject is however so ably and fully discussed in Mr. Fullerton's Minute, that I beg to refer the Right honourable the Governor-general in Council to it for any further information that may be required.

See Mr. Church's letter, 9 Aug. 1834.

I have, &c.

Prince of Wales' Island,
22 December 1834.

(signed) *S. G. Bonham,*
Acting Governor.

STATEMENT exhibiting the RECEIPTS and DISBURSEMENTS on Account of the Court of Judicature at *Prince of Wales' Island, Singapore,* and *Malacca,* during 1832-33, and 1833-34.

Dr.

	1832/33.			1833/34.			TOTAL.		
	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*	*Rs.*	*a.*	*p.*
At Penang:									
Fees from the court, per ann.	9,914	7	8	11,407	4	3	21,321	11	11
At Singapore:									
Fees from the court, per ann.	10,776	8	7	9,022	–	1	19,798	8	8
At Malacca:									
Fees from the court, per ann.	8,895	8	2	2,933	4	11	7,828	13	1
At Penang:									
Amercements, fines, &c. -	—								
At Singapore:									
Amercements, fines, &c. -	-	-	-	526	4	–	526	4	–
At Malacca:									
Amercements, fines, &c. -	-	-	-	42	1	7	42	1	7

Cr.

	1832/33.			1833/34.			—			TOTAL.		
	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*	*Rs.*	*a.*	*p.*	*Rs.*	*a.*	*p.*
Recorder at Penang:												
His salary - - - -	4,961	12	6	25,260	–	–	30,221	12	6			
His establishment - - -	519	–	–	4,330	–	–	4,849	–	–			
										35,070	12	6
At Singapore:												
His salary - - - -	-	-	-	12,630	–	–	—					
His establishment - - -	—											
										12,630	–	–
At Malacca:												
His salary - - - -	—											
His establishment - - -	—											
Registrar at Penang:												
His salary - - - -	14,400	–	–	14,400	–	–	28,800	–	–			
His establishment - - -	17,911	9	2	18,087	–	–	35,998	9	2			
Contingencies - - -	13	5	–	114	11	5	128	–	5			
										64,926	9	7
At Singapore:												
His salary - - - -	—											
His establishment - - -	11,300	7	9	13,027	4	7	24,327	12	4			
Contingencies - - -	145	3	4	287	6	–	432	9	11			
										24,760	6	3
At Malacca:												
His salary - - - -	—											
His establishment - - -	10,450	–	–	9,636	–	–	20,086	–	–			
Contingencies - - -	320	7	10	11	–	11	331	8	9			
										20,417	8	9
Sheriff at Penang:												
His establishment - - -	4,200	–	–	4,200	–	–	8,400	–	–			
Dieting prisoners, &c. - -	2,284	11	8	1,328	9	–	3,613	4	8			
										12,013	4	8
At Singapore:												
His establishment - - -	4,200	–	–	4,200	–	–	8,400	–	–			
Dieting prisoners, &c. - -	2,099	6	9	1,368	7	6	3,467	14	3			
										11,867	14	3
At Malacca:												
His establishment - - -	4,200	–	–	4,200	–	–	8,400	–	–			
Dieting prisoners, &c. - -	1,420	11	7	801	1	7	2,221	13	2			
										10,621	13	2

Coroner at Penang:												
His salary					1,400	–	–	1,200	–	–	2,600	– –
His establishment					140	–	–	120	–	–	260	– –
Contingencies					80	3	8	355	8	1	435	11 9
												3,295 11 9
At Singapore:												
His salary					1,200	–	–	1,200	–	–	2,400	– –
His establishment					120	–	–	120	–	–	240	– –
Contingencies					8	6	9	–	–	–	8	6 9
												2,648 6 9
At Malacca:												
His salary					1,200	–	–	1,200	–	–	2,400	– –
His establishment					120	–	–	120	–	–	240	– –
Contingencies					5	4	2	–	–	–	5	4 2
												2,645 4 2
CIRCUIT CHARGES:												
At Penang:												
Freight of the ship Edward					3,000	–	–	5,320	–	–	8,320	– –
Ditto - ditto - Australia					–	–	–	12,266	10	8	12,266	10 8
Expenses of the registrar					96	–	–	309	9	7	405	9 7
Batta to clerks, interpreters, servants, &c.					476	8	–	2,501	3	8	2,977	11 8
Boat-hire, &c., shipping and landing recorder's baggage					250	–	–	227	14	4	477	14 4
												24,447 14 3
At Singapore:												
Freight of the ship Edward					–	–	–	4,123	–	–	4,123	– –
Batta to clerks, interpreters, &c.					376	–	–	–	–	–	376	– –
Passage money of ditto, ditto, from Penang					192	1	7	–	–	–	192	1 7
Boat-hire, &c., landing and shipping of recorder's baggage					195	2	8	127	11	–	322	13 8
												5,013 15 3
At Malacca:												
Boat-hire, &c., landing and shipping of the recorder's baggage					–	–	–	171	12	2	–	– –
												171 12 2
					87,286	7	–	1,43,244	14	6	—	2,30,531 5 6

CIRCUIT CHARGES:												
Amount freight of 3,000 bags of rice from Malacca to Penang, per Australia, at 8 annas per bag, carried to the credit of this head								1,500	–	–	—	
Transport of 400 troops from Malacca to Singapore, per Australia								1,500	–	–	3,000	– –
Balance, being excess of disbursements					61,699	14	7	1,16,313	15	8	1,78,013	14 3
Rs.					87,286	7	–	1,43,244	14	6	2,30,531	5 6

22 December 1834.

(E. E.)

(signed) *S. G. Bonham*, Acting Governor, Prince of Wales' Island.

No 2.
Abolishing the Recorder's Court in the Straits.

(A.)

COMPARATIVE STATEMENT of Expenses incurred on Account of the Court of Justice, and what Mr. *Bonham* is of opinion would amply suffice.

Present Establishment.				Proposed Establishment.			
Penang:	*Rs.*	*a.*	*p.*		*Rs.*	*a.*	*p.*
Recorder - - - -	37,890	–	–	- - - - -	—		
Registrar - - - -	16,800	–	–	- - - - -	10,000	–	–
Clerks - - - -	10,800	–	–	- - - - -	6,000	–	–
Interpreters, criers, &c. -	4,547	–	–	- - - - -	4,547	–	–
Recorder's establishment -	4,392	–	–	- - - - -	—		
Governor's ditto - -	- -		-	Clerk and two peons -	2,440	–	–
Singapore:							
Clerks - - - -	8,400	–	–	- - - - -	8,400	–	–
Interpreters - - -	3,605	7	–	- - - - -	3,605	7	–
Malacca:							
Clerks - - - -	6,000	–	–	- - - - -	3,600	–	–
Interpreters - - -	2,526	–	–	- - - - -	2,526	–	–
*Circuit charges for 1833-4	29,633	9	8				
				Extra expenses of all sorts for Governor, each trip 800 rupees, two circuits annually - *Rs.* 1,600			
				Registrar's ditto, at 400 rupees, for two trips - - 800			
				Other contingencies unforeseen, at 800 rupees per trip, two circuits - 1,600			
					4,000	–	–
Rs.	1,24,594	–	8	*Rs.*	45,118	7	–

	Rs.	*a.*	*p.*
Present expenses - - - -	1,24,594	–	8
Proposed ditto - - - -	45,118	7	–
Proposed saving -	*Rs.* 79,475	9	8 annually.

* Circuit charges taken from absolute payments.

Prince of Wales' Island, 22 Dec. 1834. (signed) *S. G. B.*

(B.)

AMOUNT Litigated at *Prince of Wales' Island, Singapore,* and *Malacca,* during 1832–33, and 1833–34.

	Resident Councillor.	Recorder.	TOTAL.
	Span. Dol.	*Span. Dol.*	*Span. Dol.*
At Prince of Wales' Island - - - -	68,910	192,653	261,563
At Singapore - - - - - -	205,498	36,024	241,522
At Malacca - - - - - -	14,820	3,616	18,436
Spanish Dollars	289,228	232,293	521,521

	Spanish Dollars.
Total proceedings instituted before lay Judges - - -	289,228
Ditto - - - - - - - - - - Recorder - -	232,293
Spanish Dollars	521,521

Prince of Wales' Island, 22 Dec. 1834.

(signed) *S. G. Bonham,* Acting Governor.

CRIMINAL CASES decided before the Court of Judicature, *Prince of Wales' Island*, *Singapore*, and *Malacca*, in 1832–33, and 1833–34.

PRINCE OF WALES' ISLAND.			SINGAPORE.			MALACCA.	CRIMES.	—
Governor and Resident Councillor.	Recorder.	Number of Indictments.	Governor and Resident Councillor.	Recorder.	Number of Indictments.	Governor, Resident Councillor, and Recorder, generally.		
Number of Indictments.	Number of Indictments.	TOTAL.	Number of Indictments.	Number of Indictments.	TOTAL.	Number of Indictments.		
10	9	19	3	7	10	10	murder - - - - -	39
1	1	2	–	–	–	1	- - murder, with accessary before the fact.	3
–	1	1	–	–	–	1	- - murder, with accessary after the fact.	2
–	1	1	1	3	4	–	manslaughter - - -	5
8	7	15	–	3	3	5	- - stabbing, cutting, and wounding, with intent to kill and murder, with counts to do some bodily harm, to disfigure, to maim, &c.	23
1	–	1	–	–	–	1	- - shooting, with intent to kill and murder.	2
–	1	1	–	–	–	–	- - attempting to shoot, with intent to kill and murder.	1
1	–	1	–	–	–	1	- - assault, with intent to kill and murder.	2
–	–	–	–	–	–	1	assault and false imprisonment	1
–	4	4	–	–	–	1	common assault - - -	5
1	–	1	–	–	–	–	- - assaulting a peace-officer in the execution of his duty.	1
–	–	–	–	4	1	–	- - assaulting a woman quick with child.	1
–	1	1	–	–	–	–	rape - - - - -	1
–	1	1	–	–	–	–	- - assault, with intent to commit a rape.	1
–	2	2	–	2	2	–	- - carnally knowing and abusing a girl above eight and under ten years of age.	4
1	–	1	–	–	–	1	- - unlawful abduction of a girl under 16 years of age.	2
–	–	–	–	–	–	1	- - fraudulently enticing away a child under the age of ten years.	1
1	–	1	–	–	–	–	buggery - - - -	1
1	1	2	–	–	–	2	robbery - - - -	4
4	2	16	5	16	21	10	burglary - - - -	47
2	1	3	1	6	7	7	- - stealing in a dwelling-house, to the value of 50 sicca rupees.	17
1	–	1	1	–	1	–	- - stealing in a dwelling-house: some person therein put in fear.	2
–	1	1	1	1	2	1	house-breaking and larceny -	4
–	–	–	1	–	1	–	- - attempting to enter and steal from a warehouse.	1
–	4	4	–	–	–	–	arson - - - - -	4
3	5	8	3	35	38	18	larceny - - - -	64
–	–	–	–	5	5	12	receiving stolen goods - -	17
–	3	3	–	4	4	–	- - receiving stolen goods, as for a substantive felony.	7
–	1	1	–	–	–	–	- - being an accessary before the fact to a felony, as for a substantive felony.	1
2	–	2	–	–	–	3	embezzlement.	5
–	–	–	–	–	–	1	- - pledging goods entrusted to, as an agent for sale.	1

PRINCE OF WALES' ISLAND.			SINGAPORE.			MALACCA.	CRIMES.	
Governor and Resident Councillor.	Recorder.	Number of Indictments.	Governor and Resident Councillor.	Recorder.	Number of Indictments.	Governor, Resident Councillor, and Recorder, generally.		
Number of Indictments.	Number of Indictments.	TOTAL.	Number of Indictments.	Number of Indictments.	TOTAL.	Number of Indictments.		
–	–	–	–	–	–	1	-- obtaining a creese under a false pretence.	1
6	–	6	–	–	–	–	extortion - - - -	6
4	–	4	–	–	–	–	forgery - - - -	4
–	1	1	–	–	–	–	perjury - - - - -	1
–	1	1	–	–	–	–	subornation of perjury - -	1
–	–	–	–	–	–	3	slavery - - - - -	3
–	–	–	–	1	1	–	-- purchasing a female, in order to her being dealt with as a slave.	1
–	–	–	–	–	–	3	-- maliciously maiming and wounding cattle.	3
47	58	105	16	84	100	84		289

TOTAL of Prince of Wales' Island, Singapore, and Malacca - - - - 289

(signed) *S. G. Bonham*,
Acting Governor.

MINUTE by Mr. *Fullerton*, dated 1st February 1829.

PRINCE of Wales' Island, Singapore, and Malacca are three settlements now under one government, and the object of our inquiry and consideration is their administration on a scale as economical as may be consistent with efficiency.

For that administration a certain number of civil servants and native establishments are required, and for their defence a certain number of troops; the number of either need not in the slighest degree be affected by the form of administration, whether such be that of a separate government under the Court of Directors, or of a dependent one under that of Bengal. The mere personal staff allowed to a governor, a private and military secretary, not exceeding *Rs.* 1,000. per month, form but an immaterial excess, and this constitutes the only additional charge.

The following is the establishment of covenanted servants requisite for the conduct of the civil administration :

Prince of Wales' Island :

	Rs.	
3 Residents at *Rs.* 2,105 -		6,315
3 Deputies, or head assistants at *Rs.* 1,500 -		4,500
3 Assistants at *Rs.* 1,000 -		3,000
		13,815
	Rs.	
1 Governor at -	5,262	
1 Secretary at -	1,500	
1 Head assistant at	1,000	
		7,762
		21,577

3 Supernumeraries, supposed to be absent on leave, drawing the furlough allowance.

One resident, one deputy or head assistant, one assistant; three.

The same at Malacca and the same at Singapore, making nine in all, to which may be added three for the general controlling duties, if such be exercised on the spot; if on the principle of a separate government, as follows: one governor, one secretary, one head assistant, also register to court of appeal, as hereinafter described, making 12 in all; but as three furloughs are allowed, we may state the full number 15. The allowances on the existing scale I place on the margin.

If separate presidencies, each acting independent of the other, and all directly under the Supreme Government, without an intermediate controlling

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controlling authority, only the nine civil servants will be required. Whether such local controlling authority be necessary, is a matter of opinion. In my own opinion, an efficient administration cannot well be established without it, more particularly as affording intermediate appeal within the local Judicial Department. It must, moreover, be remembered that these settlements are far distant from other presidencies; with the local authorities must rest the maintenance of all political relations with the Netherlands Government, the Siamese and numerous other eastern states; the support of the British interests in these distant regions require the presence of action more prompt and decisive than a mere insulated residency could have.

If the administration be conducted as a dependent government, under the Supreme, but with an intermediate controlling authority, then the office will be filled by a head commissioner or lieutenant-governor, with the secretary and assistant under him.

If under a separate government, under the Court of Directors, subject onlyto the general control of the Supreme Government, as settled by statute, then the present system may remain as it is, established of course on the most economical principles. Reductions have been made, and are still in progress. It must be recollected that these settlements have to bear heavy transfers of servants from Bencoolen at very high allowance, which may be reduced by degrees; some increase has been unavoidable at Malacca and Singapore, for there in reality neither civil government nor administration of justice had any existence; but these are even now far more than met by reduction of superfluities at Prince of Wales' Island, and further equalization yet remains to be perfected. The whole principle pursued, and to be continued with a view to economy, has been to spread out the Penang establishment in the other two, reducing the former even in a greater proportion than the additions to the latter.*

The transfer amounted to *S. Rs.* 2,14,000 per annum.

I am not aware that the expense need be greater under a separate and distinct government than under a dependent one; the question simply is, whether the pay of the governor, resident councillor, and other civil servants, will be greater if appointed directly by the Honourable Court on a separate scale, than if appointed by the Governor-general, and of course on the Bengal scale. If we judge from past experience, we must conclude that the expense will be less: under the first, the Governor of Penang receives only 5,200 rupees per month; the Lieutenant-governor of Bencoolen received from 7,000 to 8,000; the pay of a resident councillor is only 2,105; that of Singapore, under Bengal, was 4,000; of Malacca, 2,500, besides military pay (being held by a major), and that of Tenasserim 3,000; and the allowances at Bencoolen generally exceeded those at Penang for the same class of servants.

The number above stated, 12 present, is all I contemplate as adequate to all the civil duties, collection of revenue, administration of justice, civil and criminal magistracy, and police. Allowing the absentees, the number would be 15; the present number fixed is 17; casualties would soon meet the difference; two are now employed at Tavay and Mirgue, &c.; and if those provinces were supplied from us, not a single addition to civil establishments would be required, nor to the medical, as the latter is now constituted. In all other governments the executive and judicial functionaries are distinct; but at all governments there is duty enough to be done in each department to require the exclusive appropriation of one set of officers; and from the extent of the official powers, and liability to abuse, there may be a necessity for such separation. This is not the case at these three settlements: land revenue can scarcely be said to exist, and all that we collect arises from the excise, the exclusive right of retailing certain articles; that right is sold every year to the highest bidder for a certain monthly sum, and scarcely gives rise to a single dispute or requires any exertion of authority. The main duty of the Civil Department at these settlements is the police. The nature of the population, three-fourths of which are the refuse of all the surrounding countries; the confined limits; the facility of ingress, and abstraction of property, are indeed such, as to constitute the police almost the exclusive duty of government. There seems, therefore, no necessity for separate officers for the two functions, executive and judicial,

* This might have been done with full effect as to management without the Bencoolen servants.

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judicial, and such can only involve double expense, counteraction to each other, and being quite unintelligible to the people of these distant regions, yet uncivilized, has no other effect than lessening the authority, and bringing government into contempt.

The residents at each settlement should be the responsible superintendents, directors, and controllers of all the executive departments, taking such share of duty to themselves, and employing their assistants in what manner they see fit.

The residents should, moreover, be the judges and magistrates; should try all civil suits above 500 rupees, referring those under that sum to their assistants; and should have power to punish all misdemeanors, affrays, petty assaults, and petty thefts, not exceeding 50 rupees, by corporal punishment, not exceeding 36 stripes; by imprisonment with hard labour, as far as two years; by fine, as far as 200 rupees; and for all crimes of great magnitude to commit for trial before the court of circuit, to be established as hereinafter described.

The judge should have power to refer to his assistants for trial all suits under 500 rupees, with appeal to himself if parties desire it.

The judge as magistrate should have power to refer to his assistants all inquiries on the criminal side, revising proceedings before punishment, with power of remitting such when he deems necessary.

In all judgments exceeding 2,000 rupees appeal should be open to the court of circuit, as hereunder described; in all cases exceeding 3,000 rupees appeal should further be open to the King and Council.

The governor, or other controlling authority, should proceed on circuit twice a year, and besides exercising general supervision in the Executive Department, try all criminals committed, and all appeals pending; the resident sitting also with the governor, but the latter having the casting vote.

The civil process should be by plaint and answers delivered, written or taken down by officer of the court, examination of witnesses, and exhibits and judgment according to equity and right. In all cases of importance, when either party required it, jury of four or seven might be impannelled to give their verdict; and this in commercial cases would probably be the most satisfactory to the merchants of the place.

British-born subjects should be amenable to these courts, as they are in other parts of India; but in all cases exceeding 2,000 rupees, with right of appeal to the Supreme Court at Calcutta, instead of the governor and councillor as the court of appeal. They should be subject to the magistrates also in manner prescribed by Act 53 Geo. 3, c. 155, s. 105 & 107, against any act done by the government of these settlements in its executive capacity. Parties deeming themselves grieved might appeal to the Supreme Government; if not satisfied, a suit may be entered in the Supreme Court at Calcutta, and defended by the Company's advocate-general, if deemed necessary by the Governor-general in Council.

If the administration of justice entirely by civil public servants be objected to, there could be no difficulty in attaching five merchants, settlers, as assessors, on the same principle as a mayor's court, the resident as mayor, the others as aldermen, and the Governor and Council holding only, as formerly at Madras and Bombay, the courts of oyer and terminer. Any one of the modes here proposed would be preferable to the present, which is more expensive and worse adapted than any system which could be devised.

The criminal trials should be conducted before a petty jury, on information or arraignment, drawn up from the magistrate's proceedings in each case, by the register of the court, in precise and distinct form, specifying the crime, place, and time, as in a regular indictment, but divested of the technical formalities on points not affecting the criminality of the offence; evidence to be taken on oath before the court; witnesses for prisoners examined, and judgment given on verdict of guilty, sentence might be executed, judges having power of mitigating punishment; a correct record of depositions taken before the magistrates; evidence and proceedings before the court to be kept and transmitted to the Court of Directors; a clear and distinct specification of crimes and their punishments to be drawn up and framed into a Regulation to be enacted for that purpose. All inhabitants should be liable to trial before these courts, except British-born European subjects. British subjects, military, may be deemed liable to trial for all crimes and offences by court-martial, as in India, beyond 120 miles from the presidencies; other British subjects to be amenable to the court at Calcutta, sent for trial on commitment by the resident acting as magistrate; all depositions and witnesses

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witnesses to be sent to Calcutta; adverting to the class and description of British inhabitants, such a case would scarcely occur.

There is yet another mode of proceeding by which justice may be administered, and still a considerable saving take place; namely, to constitute this government exactly like the other governments of India; to fix one of the settlements (Malacca, for example) as the presidency, to have there a governor and two councillors; to reduce these at the other two to the rank of residents only, with powers of zillah judges, on 2,000 *l.* per annum; to establish the King's Court on the original scale at which it formerly stood; to limit its jurisdiction over natives to the presidency town, and four miles round; allowing it over European British subjects, the Company, and their servants, the same powers held by the Supreme Courts. If deemed unadvisable to make the Governor and Members of Council the judges, make a mayor's court of it, as formerly at Madras and Bombay, leaving justice to be administered at the other two places, and beyond four miles from the presidency town, by provincial courts; three zillah courts, one judge of appeal and circuit, and the Governor in Council, the Sudder Adawlut. This would only require one more civil servant, but would cost more than the other plan by the full allowance of the King's judges and Court, but would certainly be more convenient and economical than the present, and its expenses would not exceed the receipt framed as hereinafter proposed.

For the native establishments in the Civil Departments, I am not aware that the constitution of a government would require a greater expense than any other: the records, the accounts, and the police would be much the same under any system. The main expense at present is the paraphernalia of an English court of justice: registers, clerks, sheriffs, coroners, &c. &c. The same set of native officers may do all under a resident; and a very small fee in the administration of justice would pay the expense; I would say from 5 to 10 per cent. in amount, decreed leviable from the *malâ fide* party at the close of the suit; the demand of fees in advance, *in limine* I would entirely reject.

The military would be exactly the same under one system as another: I should say, native infantry one regiment, of 1,200 rank and file, divided between the three settlements as circumstances may require.

Artillery: one captain, two subalterns; 40 European artillery to the garrison of Fort Cornwallis; one company Goloundauze, ditto, ditto; one company Goloundauze, divided between Singapore and Malacca, and one officer at each station: no general or division staff are required, except a paymaster. The local staff may stand as follows at each station:—

1 Fort Adjutant at Prince of Wales' Island.
1 Cantonment ditto at Singapore.
1 ditto ditto at Malacca.

3 in all, acting also as Commissaries and Sub-paymasters at the two latter.

The senior officer of artillery to superintend the arsenal.

The artillery officer at the other stations may also be in charge of the military stores and ammunition and ordnance; and either they or the cantonment adjutant may in common act as executive officer or engineer in charge of public buildings. When works of magnitude are going on, a superintending officer (professional) may be employed, as at present.

The office of town major and military secretary may be continued, as at present, united; the Governor holds a commission as commander-in-chief of the town and garrison of the settlement at which he may reside for the time being, and which is then the seat of government. The military secretary and town major will accompany the Governor; the detail duties will be conducted by the fort or cantonment adjutant, acting under orders of the Governor, through the town major, while the Governor is present; while absent, the fort or cantonment adjutant will act under the orders of the senior officer commanding the troops in cantonment. From the nature of the government, there being no military Board, the military secretary* now acts under the orders of the Governor, as a controlling authority on the Ordnance and Military Store Departments, in so far as to pass indents for stores,

* I should say the resident councillor, were I not doubtful as to the propriety of a public servant exercising any military functions without a military commission.

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stores, and sanction issues required in common routine, under the appointment of the inspector-general; the Governor's military secretary also superintended and controlled all the works, buildings, and repairs; and with a view to economy, the former practice may be reverted to. The nature of government, indeed, generally requires the Governor to take a more direct part in the detail and transactions of all departments than at other presidencies; and hence the private and military secretaries are indispensable.

A local medical establishment has been fixed by the Honourable Court as follows: —Three surgeons and five assistant surgeons; for the following reasons: I think the whole of this establishment might be dispensed with; we have no troops of our own, and we should borrow medical officers from the establishment that supplies the military. It is not probable that other governments would entirely approve of their troops being attended by local surgeons; such was done while the Bengal troops were here, without objection, but has been objected to by the Madras military authorities; the local establishment would therefore be surplus to demand. I am of opinion that at Prince of Wales' Island, there should be one surgeon, and one assistant surgeon for local duty of the place, general hospital, &c., one for the native regiment; three in all. At Singapore, one for the local duty; one for the troops, and the same for Malacca; making in all, one surgeon, 26 assistant surgeons for all duties; instead of three surgeons and five assistant surgeons exclusively for local duty, besides those intended for the troops, which could not be less than three, and would make in all a number more than required. The Clerical Department consists of only two clergymen for the three settlements; there should be four, one for each settlement, and a spare one; this would be saved by the reduction of the Medical Department. Of the charges of the settlements, a great portion is such as would arise under any form. Pensions and political charges, besides sums expended on account of other governments; all these swell the amount of charge, and being expended under the government of Prince of Wales' Island, unless minutely scrutinized, lead to the erroneous conclusion that they arise out of the form of administration, while in fact they are matters of course, and would be unavoidable under any form. It seems to be concluded that if the office of Governor were to cease, all the expenses in supporting the place would be saved; as well might it be supposed that if the governments of Bengal, Madras, and Bombay, were bound into residences, that the whole charge of their establishments would be saved.

As to the revenue to be raised to support the expenses, I am of opinion it should be drawn from the following sources:—

1. A duty of two and a half, or even three per cent. on one side of the trade, the export.

Country rate.

2. A tax on lands and houses, rated in money, at the value of one-tenth of the produce of lands or valued rent of the houses, to support the expense of police, cleaning streets, repairing roads, bridges, supporting gaols, and all other expenses for which rates are raised in an English country. A tax on horses, carts, and carriages, as now raised in Prince of Wales' Island.

3. Rent of the exclusive privileges of retailing spirits, keeping houses for smoking opium, retailing opium, less than a chest, for consumption; keeping houses for gaming; ditto for retailing toddy and bang-seeri, or betel; ditto pawnbrokers' shops, shop tax, and market stalls.

4. Fines and fees in the Judicial Department.—These I have little doubt would meet all expenses, duly regulated.

The argument against the first is a general one, that it would affect the trade; the argument *e contrario* must be equally so; such a tax could never affect a prosperous trade; it has not that effect in other places, nor had it at Prince of Wales' Island. The trade was greater when the rate of duty was highest, and has been much less since they were taken off than when the duties were levied; a certain proof that it is not the duty which affects the trade; they are everywhere paid; and in settlements where trade is the sole object of their establishment, it seems unaccountable that they have no existence. The objection to duties on trade appears most extraordinary, when it is considered that the Dutch at Batavia levy no less than 25 per cent. on British piece goods, on a tariff rated at least 60 per cent. above the invoice value; and there appears to be no diminution of import; and yet it is argued that the levy only of two and a half per cent. here ruins the trade;

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trade; duties on the trade afford the only certain source of revenue, the one established and understood and general throughout the whole of these Eastern regions, Dutch, Siamese, Malays, and Cochin-Chinese. Singapore has been viewed as a channel for giving vent to the extensive sale of our European manufactures, and so it has hitherto proved; but it has given vent on equally favourable terms to the produce and manufactures of every other country. It opened the vast regions of the Eastern Islands, till then unsupplied; but the period must arrive, and to all appearance it is not distant, when those countries must be saturated, like other parts of the world, with British manufactures; that period will not be accelerated by the levy of two and a half per cent. on the passing trade, nor would our forbearance retard it. But if the extension of British manufactures, and the promotion of British industry and enterprise be an object, why extend exemption from duty to imports and exports from and to other countries; why allow the piece goods of the Netherlands, of Germany, or of France, to be imported on the same terms with our own; why allow to other nations gratuitously the benefits of an establishment so costly to ourselves? The course of proceeding I am here contemplating would be easily pursued: allow the import of British manufactures, and of all goods whatever, free, if imported in a British ship from Great Britain; levy two and a half per cent. on all goods the produce or manufacture of India or any British settlements on this side the Cape, imported in British ships; levy five per cent. on all imports whatever in foreign ships; there are objections to the levy of duties on imports of the produce of the Straits and neighbouring places in junks, prahus, &c., let them be imported free in all British ships bound for Great Britain or any place beyond the Cape of Good Hope; let such be exported free; let all such be liable to a duty of two and a half per cent. if exported in a British ship for any port of India, or any British settlement on this side the Cape of Good Hope: if exported in foreign ships, let them be subject to a duty of five per cent. If any article be exported in a British ship bound beyond the Cape, on which import duty has been levied, let a proportionate drawback be given. Such a course, while it could not affect the trade of Great Britain, would assist at least in the establishment of a better relation between receipt and expenditure at these settlements.

The second is supported by the Established rate on the eastern side of the Bay of Bengal; and considering the security and protection enjoyed against foreign aggression and domestic violence, is certainly not too much to pay; it is, in fact, a country rate.

The third; of the articles taxed, four are pure vices; the principal of them, opium smoking and gambling by Malays and Chinese, no law or police regulation can prevent; vices that cannot be suppressed are fit subjects of taxation, and the good of the public requires, that if they cannot be prevented they should be brought under cognizance and restraint; but they will not be lasting sources of revenue, the vices themselves diminish under settled habits and progressive civilization, and the revenues with them. They continue high at Singapore, because the whole population consists of wandering savages (except gaming, untaxed since 1812); the others have diminished at Penang, as the population has become indigenous and settled; at Malacca, a European settlement of 300 years' standing, they scarcely exist. There is, consequently, four times more revenue realized at Singapore from a population of 11,000, than from one of 32,000 at Malacca.

The fourth arises out of the administration of justice, and requires no remark. Were the system of administration here described adopted, there can be little doubt every expense would be met without abolishing the local government and tacking these settlements to another; neither the Bengal nor the Madras government have more time on their hands than required for their proper duties: I am satisfied no saving would take place.

I conclude with a few general observations. These settlements have been viewed only as a depôt for trade; and it has been argued that as such, one or two companies of seapoys, and a few peons, would answer every purpose of security. A mere depôt might be on an island half a mile square, in a town of the same dimensions, and there is no doubt the establishment contemplated would be sufficient. But what in reality is the state of these settlements? they are not mere depôts, they extend over thousands of square miles; they now contain a population of 120,000, and every day increasing; we give them a system of judicature the most finished, the most perfect, the most expensive in the world under a King's Court; we give them all the privileges and immunities of our subjects in the mother

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mother country, which they neither require nor understand. It seems, moreover, to be expected, that we are to extirpate piracy from the Eastern Seas; and for all this the great body of our inhabitants pay nothing; for the revenue now collected from excise is paid by a very small part of the population: arrack drinkers, opium smokers, and gamblers, those who really derive the benefit, protection, and profits of the trade, pay literally nothing, and yet we are surprised that these settlements should be a dead weight on our finances. We have only to follow the course followed at all other places, and apply here those principles applied in every other part of the world; the result will be the same, they will pay their own expenses; and if the authorities in England would declare the above officially to be the rule of proceeding, with the knowledge I now possess, I should not hesitate in undertaking the duty of squaring receipt and expenditure in the course of six months.

Penang, 1 February 1829. (signed) *R. Fullerton.*

P. S.—Since writing the foregoing, I find the grand jury at Singapore, composed of the merchants of the place, have made a presentment against the gaming farm, which must of course be followed by its abolition, or the indictment of public officers conducting it: here we have 71,000 rupees at once struck off from our receipts, by the very people who enjoy the protection and profit of the trade, for the support of which the Company alone are made to pay. The gaming farm was presented and abolished at Penang, where we lost 1,20,000 rupees. Gaming amongst the Chinese cannot be prevented, and the police peons now pocket the government revenue, while gaming goes on, and is a greater nuisance than ever, and admitted to be so by the very people who signed the presentment. Thus we find the new-established principles of free trade preclude the possibility of our drawing funds for our support from that which has long been considered, admitted, and acted on, as the only legitimate source of revenue, by the Dutch, Malays, Siamese, Cochin-Chinese, and every Eastern state. A plausible moral theory, contradicted by facts, that vice is encouraged by taxation, deprives us of the half that remains: the same argument would take away the duty on opium smoking and arrack drinking, and then we are left to the lands, that only source which in these Eastern countries has never been looked to, and cannot, therefore, be made available, from want of inhabitants, and because contrary to customs and usage. The recorder, in his charge at Malacca, recommended a similar presentment; but although none was made, the discontinuance of the gaming farm must result.

Malacca, 11 March 1829. (signed) *R. Fullerton.*

(True copy.)
(signed) *S. G. Bonham,* Acting Governor.

Extract Minute by the Right honourable the Governor-general in Council, dated 17 March 1829.

Para. 3. With respect to the Judicial Establishment, I concur entirely with Mr. Fullerton in the opinion expressed in his note, as to the inapplicability of the present system of judicature to the state of things in the Eastern settlements. An essential reform is required, not only in consideration of economy, but for the well-being of these settlements; and it seems indispensable, with a view to these objects, that the administration of justice should be placed upon a different footing. Mr. Fullerton has explained the several forms which might be substituted for the present, in the note above recorded, and I shall, upon my return to Bengal, bring the subject distinctly before Council, in the hope that we may concur in a representation to the Honourable Court of Directors, and to the other authorities of England, with a view to solicit a re-consideration of the present charter of justice, and the establishment of some less expensive and better plan of judicial administration.

4. Mr. Fullerton has also suggested, that much of that part of the charge for judicial officers, which has been increased by the local government, at the suggestion of the Honourable the Recorder, or in consequence of presentments made by different grand juries, is susceptible of reduction. The sanction of the Supreme Government,

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Government, if required, will, I am confident, be readily given to any measures directed to this end; and it will be highly satisfactory to them to find in the plan hereafter to be submitted by Mr. Fullerton, that the expense of the judicial establishments will again be brought within the limit of 1824–25, or very nearly so.

(True extract.)

(signed) *S. G. Bonham*, Acting Governor.

(No. 27.)

From *K. Murchison*, Esq. Governor of Prince of Wales's Island, to the Secretary to Government, Fort William.

Sir,

I DO myself the honour to transmit, in original, two valuable papers addressed to me by Sir Benjamin Malkin, on the close of his official connexion with the Straits government, which I conceive likely to prove very useful to the legislative authorities, in the preparation of new Regulations for these settlements, and in framing a new charter of justice.

2. The first of these letters, dated the 6th July, points out various imperfections attaching to all the revenue Regulations. I submit these without comment, as they consist chiefly of objections of a legal nature. In regard to Sir Benjamin's remarks upon the evil arising out of the monopoly system as now conducted, I cannot withhold my concurrence in the opinions he expresses as to the oppression and the crime, generally, it is calculated to foster; but I deny the possibility of its being conducted under the direct superintendence of government, with its present limited establishments and means of management, even if there existed no objection to a system that would bring its officers into perpetual collision with the public.

3. The evil arising from the influx of vast quantities of copper coin is truly stated by Sir Benjamin; it has existed ever since the first establishment of Singapore, but the remedy is beyond the powers of the local authorities.

4. The letter, dated 7th, touches upon a variety of points connected with the charter and the administration of law under its provisions, to all of which I solicit attention. These include remarks upon the judicial appointments vested in the Governor in Council by the charter; remarks upon the interest allowed by government on cash deposits by the court, as in the savings banks, and upon the establishment of a pauper-house. On this last subject I shall hereafter report; at present the revenue of the Pork Farm, averaging 1,000 rupees per mensem, is devoted to that object; but the institution is so largely, if not altogether appropriated to Chinese (though the regulation is general as to the application of the fund), that it does not afford suitable accommodation for Christian, Hindoo, and Mussulman paupers.

5. The next topic is a revised table of fees for the court, requiring no particular remark; but the observations upon the charter which follow, marked (A.), I beg to point out to particular notice, as well as Sir Benjamin's remarks upon the duties and salaries of the clerks, swearers, and interpreters of the court. The reduction to which allusion is made, in the salaries of the inferior officers, was recommended by Mr. Church, and sanctioned by the Supreme Government, on the supposition, probably, that the professional judge, or the registrar at least, had been previously consulted. On becoming aware that this was not the case, I trust the reduction may at least be modified by the Honourable the Governor-general of India in Council. I fully concur in all that Sir Benjamin has expressed as to the evil consequences of making the court's servants liable to such serious diminution of salary, or even to dismissal, excepting in cases of misconduct. It is a pleasing duty to solicit attention to Sir Benjamin's opinion of Mr. Kerr's merits; an opinion in which, I am certain, every individual in the Straits most cordially concurs.

6. The latter portion of the letter has reference to points of mere local interest, with which I should not have troubled the Supreme Government if I could have readily abstracted them; but I am unwilling to mutilate these documents, and their great length precludes me from taking copies of those parts more immediately connected with the subjects referred to the notice of the Supreme Government.

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7. In conclusion, I beg to intimate that Sir Benjamin, who is now proceeding to Calcutta, will be happy to enter into direct communication with government on all the matters discussed in the letters now transmitted.

I have, &c.

Prince of Wales' Island,
28 July 1835.

(signed) *K. Murchison,*
Governor.

From Sir *B. H. Malkin,* Kt. to the Honourable *Kenneth Murchison,* Esq., Governor of Prince of Wales' Island, Singapore, and Malacca.

Sir,

1. At the close of my official connexion with these settlements I am desirous of addressing you on a variety of subjects of much importance to their well-being. I have been unwilling to do so before from feeling it undesirable in my judicial situation unnecessarily at all to interfere, even by suggestion, with the administrative powers. I have not indeed been prevented from occasionally addressing individual members of the government on some matters connected strictly with the legal condition of the settlements; but I have not hitherto thought it desirable to express any opinion on mere questions of policy. The reason for my abstaining, however, has ceased to exist, and I should be unwilling to quit this place without securing myself against the danger of misunderstanding, by showing that my silence has not in all cases proceeded from acquiescence.

2. My letter is likely to omit many suggestions which have from time to time occurred to me, but I wish at least to state officially my views on several subjects of practical importance, which seem to me to be at present questionable or misunderstood. In doing so I may run some risk of repetition, as some of my former letters, although unofficial in form, may have been treated as official in substance, but if this has been at all the case, I am not aware to what extent.

3. The first and most important question is the expediency of the complete abrogation of all the existing Regulations for all these settlements, (except that for the assessment, which I have never seen,) and either their re-enactment, with certain modifications, by an authority subject to no dispute, or the substitution of a completely new system of taxation, &c. for them. The Regulations in existence, as far as I am aware, with the exception already referred to, are only those of 1830, (modified in some small points by one of 1831 and one of 1833,) and the Penang Land Regulation of 1831.

4. My opinion against the legality of the Singapore Land Regulation has already been judicially declared. A well-devised registry law would, in my judgment, be a great benefit to these settlements; and although I would not myself recommend either that or the Penang Regulation as a precedent to be implicitly followed, I had rather see them re-enacted, with certain modifications, than merely declared null. One alteration in particular seems to me of first-rate importance; the collector's office is one from which original grants issue, and which in many cases therefore confers a title. The registry office ought to be most strictly confined to its own duties, the authenticating and making public not titles, but the documents on which they depend. It has nothing to do with the question whether a conveyance is well drawn, or whether the parties have title to convey; it merely provides against its loss or suppression, leaving the question of its effect or legality to the proper tribunals; it ought, therefore, to be kept quite distinct from the land office, and from everything which seems to confer title. Under the present Regulation the course adopted is exactly contrary; it is therefore hardly possible to prevent an ignorant population from attaching to the mere fact of registry a false, in addition to its intended, effect; and even the managers of the office themselves may sometimes have difficulty in drawing the line between their powers of granting new, and their duty of registering derivative titles.

5. You will collect from what I have said, that I consider the Penang Regulation invalid, as well as that for Singapore. This is an opinion which I have before intimated both to Mr. Murchison and to Mr. Bonham; but as these were not strictly official communications, and as there are objections to the Penang Regulation quite distinct from that on which the Singapore Regulation was declared illegal, I had better shortly explain them. The Governor in Council of Prince of Wales'

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Wales' Island, Singapore, and Malacca, by whose authority the Singapore Regulation was passed, had no power at all of passing regulations, except for "imposing duties and taxes." The Singapore Regulation was declared illegal, as not being one for these purposes at all; and the same argument would apply to the Penang Regulation also, if it were only under the stat. 53 Geo. 3, c. 155, s. 98, that it could be supported.

6. The Regulation, however, professes to be passed by the Bengal government, and I believe there has been a notion that it may be valid under their general powers of passing Regulations, independent of the taxing power given in the 53 Geo. 3, to which only, if even to that, they could succeed, as substituted for the local government, for the local government had no other.

7. Now, I very much doubt whether, even if the Bengal government had *primâ facie* the power contended for in places which might from time to time become subordinate to them, it would apply to the Straits settlements. In these the King, by his charter, had fixed the law, and had abstained from giving any power to alter it. It would be a very large construction of the power given to the Company to vary the government, and annex these settlements to any other presidency, to say that it implied the right of subjecting them not merely to a different administration, but to a new legislature.

8. But, besides this, I do not know where the supposed power of the Bengal government originates. They had no legislative authority, except what was expressly given them; and I know of no delegation of such power to them, except that contained in the statute 13 Geo. 3, c. 63, s. 36, and the subsequent statutes grounded upon it, which enable them to make Regulations for the good order and civil government of the settlement at Fort William, and other factories and places subordinate, or to be subordinate thereto, and that given by the statute 21 Geo. 3, c. 70, s. 23, and the subsequent Acts grounded on it, which give the power of "framing Regulations for the provincial courts and councils." It is upon these latter provisions that the power of legislation for the mofussil is supposed to depend.

9. Now, I am not aware that the former Acts have ever been supposed to extend to such a case as that of the Straits settlements since their annexation to Bengal; but, at all events, if the Regulation is to be maintained under them, it is void for want of registration, not here, but at Calcutta. If, on the other hand, the second class of statutes is referred to, they only extend to the making of Regulations for provincial courts and councils; and however general their operation may have been in framing a new system of law through the intervention of those courts and councils, they can have no effect when none such exist, as is the case here.

10. On these grounds, which have been somewhat more fully communicated to Mr. Murchison before, I am clearly of opinion that the Penang Land Regulation rests on no legal authority, and that a new one therefore should be obtained with all prudent dispatch, and that no attempt should be made to enforce that now existing. I do not now trouble you with any suggestions as to the provisions of a new one; indeed I do not think it necessary at present to do more in any of these observations than to point out the expediency of some change. I shall have abundant opportunity at Calcutta to make any comment on the particular changes proposed, if it is wished that I should do so.

11. It may be desirable to observe, that although many of the objects of a new Regulation might be obtained without one, by making them matters of contract and condition in the grants of the government, this would be but an inadequate substitute for a valid law. Continual questions would arise as to the parties who were to be bound by the stipulations, and the stipulations themselves would require to be most carefully drawn and considered. I am the rather induced to mention this, by having recently seen the form of some grants issued about the year 1828, and I believe continued until they were supposed to be superseded by the Regulation now under discussion. It might therefore possibly be thought expedient to return to these forms, pending the receipt of a new and valid Regulation; I therefore beg to call attention to one of their provisions. Besides several stipulations as to payment of rent, keeping up of landmarks, and registry, the grants are declared to be "further subject to such other conditions as the said united Company, their successors, or assigns may hereafter think proper to require in their favour, as permanent lords of the soil." A provision so unreasonable in itself, or

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likely to be so fertile in litigation, I think I never saw. Nothing except the singular improvidence of the inhabitants of these settlements can account for such a grant, so vague and liable to be so materially altered *ex post facto*, having been accepted in a single instance. Any man who cares to know what it is that he buys would refuse it.

12. Before I quit the subject of the lands, I will mention another circumstance connected with them. Province Wellesley is not included in the 81st section of the recent statute, 3 & 4 Gul. 4, c. 85, which defines the territories in which British subjects may reside without license. There seems to be no reason why this power of residence should not extend to that district as well as to Prince of Wales' Island, but the date of its coming into our possession was probably forgotten, and so it was omitted in the list of acquisitions since the year 1800, to which the privilege was applied. The question is of little importance to holders of land who enjoy it under the Company's grant, or from whom the Company have accepted rent, and who would therefore probably be treated as having the Company's license (*see* Mr. Phillips's Minute on Landed Tenures, pp. 58. 62); but it might perhaps affect purchasers from them, and the extent and revocability of the licences might come in question. It would therefore be very expedient to set all such disputes at rest, by obtaining an extension of the privilege of unlicensed residence to Province Wellesley, under the provisions of the 83d section of the statute.

13. The remaining Regulations are all revenue Regulations, and are legal, if at all, by virtue of the statute 53 Geo. 3, c. 155, s. 98 (note 1). They all establish monopolies, and all therefore, besides particular difficulties arising on each of them, raise the great question whether that statute gave the power of establishing monopolies.

14. On this subject I expressed myself in the following terms, in a letter to Mr. Ibbetson, dated 9th October 1833, which has, I believe, been treated as a document of a public character: "I cannot but feel some doubt how far a power of taxation gives the power of establishing monopolies, or at all events of making all the provisions necessary to enforce them. I do not however mention this as a practical objection," (to the enactment by the then existing authorities of new Regulations for monopolies); "the practice is too inveterate in India to be now set aside by any Indian court; but I cannot pass it over entirely without observation, as I much doubt whether anything but long usage has sanctioned it." Similarly, in reference to one of the monopolies existing in the Straits before the present Regulations, Sir C. E. Grey, Sir John Franks, and Sir E. Ryan, in answer to questions submitted to them by Sir John Claridge, said, "Considering the existence of the opium monopoly throughout British India, we cannot take upon us to say that such a Regulation is not one which might be established under the 53 Geo. 3, c. 155, s. 98;" a form of expression which seems very clearly to intimate that the universal practice would prevent them from pronouncing it illegal, rather than that they felt fairly convinced of its legality, if the question were to be considered as open.

15. I am not disposed decidedly to vary from the opinion above expressed, but the inclination of my mind, were the question treated as an open one, is yet stronger than before, that the establishment of a monopoly, though it may produce revenue, is not the imposition of a duty or tax, and therefore not within the statute 53 Geo. 3, c. 155, s. 98; and, besides this, I do not think it clear that the existence of monopolies in India generally depends on that statute, or the 54 Geo. 3, referring to it as a criterion, and if not, as their existence here does so depend, a decision against them here would not affect the general question, and consequently the general usage would have little weight as authority in the particular doubt. With respect to the mofussil, these restrictions on trade might perhaps be supported as valid under the general legislative power of the different governments; and even with respect to the places where registration in the King's Court is required, and where, therefore, the Regulations are to be "not repugnant to the laws of the realm." I am not certain that a Regulation ought to be refused registry merely because it was not conformable to the statutes of James 1, against monopolies, which were not forbidden by the common law of the country.

16. I would not be understood to attach much weight to these arguments, or to intimate any very material doubt as to the practical validity of monopolies here; but I think there is doubt enough to make it desirable, now that there exists an authority

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authority of unquestioned jurisdiction, to have these Regulations reviewed, and either altered or abrogated, if unfit to be continued, or re-enacted if their continuance is desirable. But besides this general question, there are particular difficulties arising in all the Regulations, which by themselves seem sufficient to call for a revision of them. I will not pretend to point out all which might be raised, but I will give a few samples of the questions that may arise.

17. The Opium Regulation contains clauses prohibiting the preparation of opium for smoking, or the selling it in small quantities in vessels within 10 miles of the coast of any of these settlements; and it gives the magistrates the same power in these cases as over similar offences committed on shore, and it allows vessels to be searched under a magistrate's warrant. What power had the local government to make laws affecting the conduct of persons not necessarily or probably their subjects, not necessarily even the subjects of Great Britain, on the high seas, in one of the great thoroughfares of the world? Has even the new Legislative Council of India such a power? The commission of any of the acts in question, outside of these harbours, for the purpose of evading the local regulations, might be a fraud upon them, and an offence against them, but this Regulation would prohibit a sale of opium never intended to be brought within our territories, to persons not at all our subjects (Note 2). If the Regulation is valid, a magistrate would be bound to convict, and in this, as in all these Regulations, he has not even the power of mitigating the penalty.

19. Again, the farmers of opium, suree, toddy, and spirits, are disabled from selling their articles except for the current coin, and are made liable to a penalty if they do so. This may be a good rule, but where is the authority by which it is imposed, and a new crime created? The statute 53 Geo. 3, c. 155, s. 99, gives power "to make laws and regulations respecting the duties and taxes authorised by the Act; and to impose fines, penalties, and forfeitures for the non-payment of such duties and taxes on the breach of such laws and regulations." But how are these laws and regulations respecting a duty or tax? The tax, if it be one at all, arises out of the monopoly. There may be laws which the monopoly makes convenient, or possibly almost necessary for the protection of the purchaser; but how does it "respect" the duty or tax? Surely the only object of the statute was to give all powers necessary for the protection of the revenue; not, where a general power of legislation had been refused, to give a particular one in all cases which could by possibility be hitched upon the subject-matter of these Regulations.

20. The same observation seems to apply, and it is unnecessary to explain it in detail, to the 12th and 21st sections of the Spirit Farm Regulation, and to the 7th section of that for the Pork Farm. Most of the acts prohibited by the latter may be punishable, independently of the Regulation, as frauds or nuisances; but that does not give the government the power of making them into a new crime, or fixing an absolute penalty; and it is clear that these provisions have nothing to do with the protection of the revenue.

21. I give these rather as specimens than as a catalogue of the difficulties arising on these Regulations. That on Pawnbrokerage and the Market Regulation seem to require a different consideration; for besides similar doubts which may exist with respect to many particular provisions contained in them (and among others it may be worth mentioning that the original Pawnbroking Regulation treats the government, and the amended one the local authorities, as authorised to vary the legal rates of interest), I do not see how it is possible to torture either of them into the imposition of a duty or tax; opium, suree, &c. may be treated as indirectly taxed by the establishment of a monopoly which gives the government a revenue derived out of the price; but what is the subject-matter of the tax, or who are the persons taxed by either of these latter Regulations? The Market Regulation, indeed, is ostensibly for police, and not for revenue; and the amended Pawnbroking Regulation is simply passed by the Governor-general in Council. It applies, however, to Prince of Wales' Island, and therefore is void under the 53 Geo. 3, c. 155, s. 98, for want of the sanction of the Court of Directors and approbation of the Board of Control, if treated as the imposition of a duty or tax; if sought to be supported in any other way, the observations made on the Prince of Wales' Island Land Regulation apply to it also.

22. The objections hitherto suggested affected the legal validity of the existing Regulations; and when I formerly addressed Mr. Ibbetson, at his own desire,

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with respect to certain projected alterations, I confined myself exclusively to considerations of that kind; but I have already said that the reason of my doing so has now ceased, and I think it therefore desirable to add some observations as to the inexpediency of continuing the existing system.

23. The necessity of some revision will, I think, at once appear, by adverting to the absence in all of them, except in some parts of the amended Pawnbroking Regulation, of any power of mitigating penalties; an evil in itself where the penalties are so severe, and still more mischievously so when we look also to the acts which in some instances may be crimes under these Regulations. By the Opium Regulation, a druggist selling raw opium for medical purposes is liable to fines of 200, 500, and 1,000 rupees, or to imprisonment and hard labour in irons for 6, 12, and 24 months, for there is no exception in his favour. By the Suree Regulation, the grower of suree within the limits of the Regulation—and here a party will be liable to the penalties or exempt from them, as he may live on one or the other side of a ditch (Note 3)—will be liable to a fine of 100, 200, or 400 rupees, or to imprisonment for three, six, or twelve months, if he is found in possession of suree of his own growth, without having taken it to the renter, sold it to him, and repurchased it. The Toddy and Baang Regulation provides for the case of persons found in possession of their own produce, but the Suree Regulation makes it imperative on the government to fix a price at which the renter is to retail, as well as the price at which he is to buy; and the Pork Farm Regulation contains a similar provision; but the farmers of opium, spirits, and toddy, and baang, are left unfettered as to their price of sale. There may be a reason for this latter distinction, and perhaps a good one, but it is at least worthy of consideration whether this absence of uniformity in enactments generally of the same nature does not do more harm, by producing confusion among a people very little likely to become well acquainted with the contents of these Regulations, than it can do good by incidental advantage in each particular case.

24. The provisions of the Spirit Farm Regulation are peculiarly complicated and obsure; the revenue was originally to be derived from Asiatic spirituous liquors, the exclusive privilege was of retailing them only; but the Regulation contained provisions for preventing the sale of wine or European spirits in small quantities, without paying a duty to the renter, and for preventing their removal without permits. And the alteration made in 1831, only removed the difficulty as to European and other spirits; it left it unaffected as to wine. This perhaps ought rather to have been mentioned under the former head of want of authority; but it is worth consideration here, too, for the duty may be paid over and over again, on successive resales. Again, the distillation of spirituous liquors is already prohibited; no one may use the produce of his ground in this way. This may be convenient for the purposes of the farm, but is it either reasonable, or a Regulation "respecting the duty." Again, the importers of Asiatic spirits, except Bengal rum and Batavia arrack, and of samsooe are to sell them to the renter at the market price of the day; the provisions on this subject are confused and obscure, but they rather seem to import that no one but the renter shall purchase these articles; if so, what does "the market price of the day" mean? The 19th section indeed provides that a true and just written account shall be furnished to the renter, of market price of the samsoo, but it does not say by whom, or from what it is to be collected.

25. By the Pawnbroking Regulations, whether the original or the amended one, if the keeper of a shop attempts to quell a disturbance, fails, and does not apply to the nearest police officer for assistance, he is to be treated as a party concerned in the riot; this is invalid in the present Regulations for reasons already given, but would it be reasonable in any new one? The same Regulations affix definite pecuniary penalties to the very definite crime of "in any way contravening the spirit" of the section which prohibits any persons, except those licensed, from exercising the trade of pawnbroker. I have already alluded to the power given to the local authorities to fix the rate of interest, but it is perhaps worth while to mention that it is only very recently that this has been done at Prince of Wales' Island in any formal way; that for want of it, it is a question at present undecided and likely to be raised, whether the pawnbroker can charge interest up to the day of redemption only, or for the whole month in which the redemption takes place, which has been an usual practice; and that the provisions of the Regulation as to the time at which

which pledges may be sold, and the application of the surplus, have been altogether disregarded.

26. The penalties of the Market Farm Regulation have no reference whatever to the provision by the government of sufficient markets. At Malacca the markets are so situated that it has been found almost impossible to enforce the Regulation with respect to some of the less valuable articles offered for sale; but what has been done in consequence? a toll, not authorised by the Regulation anywhere (for the profit to be derived under the Regulation is by stall hire), has been demanded at a distance from the market. This practice is of course illegal, but I am not sure that it is confined to Malacca; if I am rightly informed, for I do not wish to speak positively except on matters which have been proved before me, or which are within my own personal knowledge, the persons in charge of the market here have made similar demands.

27. These inconveniences, and I believe others might be easily discovered, seem to me to furnish abundant reason for a revision of the existing Regulations. But there remains a much more important question; if it is either necessary or expedient to make any change, is the monopoly system one which ought not to be retained at all?

28. In considering this, I will not enter into any of the general arguments against monopolies; these are well known and obvious; they did not indeed prevent the Parliament from allowing the continuance of the opium and salt monopolies for purposes of revenue, but a decided opinion was expressed by all parties as to the expedience of abolishing them as soon as the loss could be afforded.

29. I will however confine my observations to monopolies as they exist here; to their practical effect in the manner in which they are, perhaps necessarily, administered. I leave out of consideration even the enhancement of price, which, as the monopolies are at present nearly confined to articles of luxury or intemperance, may be no evil. This observation will not, however, I believe, apply to the suree farm, nor to that of pork, which however stands on a separate ground, as the revenue is appropriated by the Regulation to local purposes of great importance and benefit to the classes principally affected by the exaction.

30. The first point to which I would particularly call attention is the enormous power put into the hands of the farmers and the persons in their employ. This is an objection to all monopolies, but its importance very much depends on the character of the persons likely to be engaged in them. Now to whom is this authority here confided? I believe that the farms are sold most rigidly to the best bidder; the only criterion of fitness being his ability to deposit the rent for a certain portion of his occupation; and the main security of the government, whether any bonds from sureties are taken or not, being the power of resale in the event of default, before the amount of this deposit is exhausted. Perhaps this is all the government can do; perhaps an inquiry into the character or respectability of the proposed farmer would be too vague and dangerous a criterion to act on; but I believe the practical effect has been, that in very many instances the farms have been let to persons neither of wealth nor of respectability, and not unfrequently to mere nominal purchasers, put forward to take the responsibilities of misconduct, but not really allowed the management of the concern, which was reserved for the substantial purchasers, who have occasionally been convicts, even if convicts have not, of which I am sure, been formally received as the ostensible farmers: whatever, therefore, there may be of exaction or of fraud, may be done by persons screened from observation; while all punishment, and often all civil liability, falls on some one hired, like the nominal proprietor of a libellous newspaper, to bear the legal consequences of another man's crimes or default Note 4).

31. If such be the persons to whom the monopolies are given, it becomes very important to see what practically are their powers. If the government kept the monopoly in their own hands, they would at least retain the power of passing over trivial cases, and not subjecting persons, if only slightly culpable, to the heavy and unmitigable penalties of the Regulations. But what probability is there that the farmer, selected, or rather unselected, as he is, will attend to any such considerations? even if he acts honestly, and attempts to gain no more than his right, what likelihood is there of his flinching from the most complete enforcement of

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of it? It is his interest to do so in all cases; and under the Spirit Regulation, though only under that (another curious instance of want of uniformity), he has the further inducement of a share of the penalty, if he himself becomes the informer.

32. A yet more formidable power of oppression, and inducement to exercise it, consists in the opportunity of harassing persons who have not really infringed the Regulations at all, or who have only infringed those parts of them which are of the most questionable authority. Looking to the character and habits of many of the nations which resort to our ports, what likelihood is there that they would resist a demand made by a person under some colour of official character, who represented that a Regulation, of which the foreigner had never heard, had been infringed, pointed out the penalties which would follow on conviction, and offered to take a moderate compromise instead of proceeding to enforce them? Cases of this kind can rarely be known in detail; but no one, I believe, can deny the probability of their existing, or does practically doubt that they do exist to a large extent. For instance, when I was last at Singapore, I heard of the probability of proceedings before the magistrates, under circumstances which, if correctly represented, would not have supported any conviction. The case, however, never came forward at all, but I believe every one who heard anything of it, supposed, not that the farmer had found out his mistake, but that he had driven the defendant to a compromise. I may here also refer again to the case mentioned in Note (2.)

33. The evil, however, does not rest here; the power of oppression given to the farmer is perhaps hardly so great as that placed in the hands of the peons, and other subordinates whom he employs. Under the most favourable circumstances, such officers are not likely to be very immaculate. But it is clear that the best security for the conduct of these functionaries would be, their being immediately in the employ of the government, or of farmers whose personal respectability was ascertained. If the farmer is a corrupt and fraudulent man, the more oppression his servants exercise, if it only prove successful, the more highly will he value them. And accordingly, what is the character which, whether they deserve it or not, they in fact bear? I am told, indeed, that they have been considered by a bench of magistrates to be persons in whom a right to search houses and persons, without even a magistrate's warrant, might properly be, and was vested; but I have already judicially declared my dissent from the law of that opinion, which is not likely again to be acted upon; and I believe that, such as it was, it proceeded on a supposition of financial necessity, not from any consideration of the danger of abuse. But with this single exception, I hear on all sides distrust of the character of all peons of this description, those in the service of the Government, who, I suppose, are the best that can be procured, not excepted; and I certainly have known both a grand and a petty jury find bills and verdicts against persons of this description, with which in some cases I have not been absolutely dissatisfied, in others I have, but in all I could not but think a person, free from the obnoxious character, would hardly have been put upon his trial, or convicted without stronger testimony.

34. If, however, I am rightly informed, the mischief spreads yet wider, at least in one instance. The revenue derived at Singapore from the opium farm, has increased very remarkably of late, and the solution I have generally heard of it, has been that some Chinese connected with the Hooeys, or fraternities in the island, have become the farmers, and have been able to afford a much larger rent than their predecessors, from the additional power which this connexion gives them of detecting any smuggling. In short, they gain the advantage of having, besides their establishment of peons, an irregular body of spies and intelligencers scattered in great numbers over the island. Now if I hear any bodies of men universally denounced as dangerous, any system of union treated as mischievous, it is these very Hooeys, which derive in this manner an indirect support from the monopoly system. I do not mean that the government, because they derive incidentally some addition of revenue from their existence, would show any undue favour to these associations; but these bodies, tyrannical and oppressive as they are said to be, but checked in some degree by being afraid to attract much public notice, can hardly fail to have their powers practically increased, if they can venture into public, and at once exercise oppression on their enemies, and procure pecuniary benefit to some of their members, by a real or pretended assertion of the

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the law. And here, as before, the danger is not merely of undue severity in the open enforcement of the claims of the monopolist, but still more of under-hand tyranny, by threats of proceedings perhaps really untenable.

35. These are the principal local arguments which occur to me; and I have already said that I do not wish to retail those of a more general nature, with which every one is acquainted. The local considerations, however, seem to me of sufficient weight to make it a serious question, whether monopolies are expedient here, even if their continuance on the continent of India is desirable.

36. I am aware that their abolition would render an entirely new system of revenue necessary. It would be impossible to raise even the amount now received by a system of direct taxation of the same articles. The Singapore opium farm, rents, I believe, for 4,800 dollars a month; and I am told that the consumption in that time is not more than about three chests. The opium, therefore, which sells for about 550 dollars a chest, that sum consisting of a monopoly price at Calcutta, with freight, insurance, and the merchant's profit added to it, is farther taxed at Singapore to the extent of very nearly 300 per cent. on its import price there; and the whole price of it to the farmer is about 15 times its original value in the grower's hands in Bengal. Before it gets to the customer, the farmer has to pay his establishment of peons, to keep the requisite shops, or to give under-lessees the profit necessary to induce them to keep them, and to get a profit on his adventure equivalent to his large outlay. It is quite improbable that the government could levy successfully an impost of corresponding amount, even allowing for eth fact that the farmer's profits would not have to be included; yet there is no reason why the government peons should be less effective than the farmer's. The only account that can be given of the difference is, that the government would not have the benefit of the system of indirect espionage already referred to, and that their peons would be confined to the fair and honest enforcement of the law; but if so, the present system is only effective by means indefensible, and an evil in themselves.

37. The government, probably, would be equally powerless in enforcing the suree farm to its full extent. The retail price under the Regulation appeared, when a case connected with that farm came before me at Malacca, to be treble that fixed there for the purchase by the renter; and in consequence of my deciding that the renter was bound to take all suree tendered to him at the fixed price, the farm was resold; and I believe a lower rate fixed for his purchases. The re-sale was only justice to the renter, who had purchased the farm under an impression, which the officers of the government also entertained, that he need only buy what he pleased. But it may well be questioned whether the reduction of price was justice to the growers, who had had a rate fixed by competent authority for the year; and also, whether the government had any authority during that year to make the alteration; but however that be, the enhancement of price was originally 200 per cent. and more after the alteration; and I suppose the rates are not materially different at Singapore and Prince of Wales' Island. Considering the nature of the article, the manner in which it is grown, and the small quantities in which it is retailed, this, though less striking than the former case, is an amount of duty which it would perhaps be equally difficult to levy by legitimate means.

38. Similar observations might probably apply to some of the other monopolies; but enough has been said to show that I am not blind to the financial difficulties attending any alteration; this, however, does not affect the necessity of considering whether the present system is fit to be continued; if no adequate substitute can be devised after due inquiry and consideration, the impossibility of finding one might be a reason for the continuance, by competent authority and with proper modifications, of the present system; but at all events, the evils which exist, furnish, as it appears to me, ample reason for endeavouring to remove them by introducing some new plan. It would be foreign to my purpose to enter into consideration of the feasibility of such a change, or the most desirable way of making it; but I know nothing in the circumstances of these settlements to make it impossible.

39. I have no further observations which I wish at present to offer on the existing Regulations; but there are two other subjects connected with legislation which I will take this opportunity of mentioning.

40. The first is the notion very generally entertained of the expediency of re-establishing a gambling farm. This question has long been a matter of discussion in the Straits, from the time when such a monopoly existed, throughout the period of its discontinuance till now, when the general course of opinion seems to be in favour

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favour of its re-establishment. As a practical question, I hardly think it worth discussion, for it cannot be re-established except by a fundamental alteration of the law; and I do not believe that any legislative body, competent to make such an alteration, will consent to do it. But the arguments by which the expediency of such a change is supported, raise some questions to which it may be desirable to advert; and I feel anxious also to explain the grounds of my own opinion; because I entertain high respect for the judgment of some of those who wish for such a change, though in the particular case, I see nothing like soundness in the arguments which are generally used in support of their views.

41. I have already said that nothing can be done without a fundamental alteration in the law. Gambling, whenever and wherever committed, is an offence against the law as it stands; no government, in its executive capacity, can license the commission of a crime, and no authority empowered under the 55 Geo. 3, to impose duties and taxes, can repeal part of the general criminal law for the purpose; they can make some new offences of smuggling, but they can legalize nothing which is forbidden on grounds unconnected with revenue. The farmers of the monopoly, therefore, if it were established, would be indictable, unless the laws against gaming are abrogated generally, or unless the Legislature have nerve enough to pass a law, leaving the practice illegal in itself, but permitting it in the government gambling house. The prohibition must be made fiscal only, before the licence can be effective.

42. Now, what are the common arguments in support of the establishment of such a monopoly; besides the advantage to the revenue, I believe they may be reduced to four: the inexpediency of absolutely preventing gambling, at least as far as the Chinese are concerned; the hardship of prohibiting it when practices equally pernicious, as opium smoking and spirit drinking are allowed; the direct benefit of having it carried on, if at all, in public and well-known places, and the inefficiency of the present system in preventing it.

43. To the first argument, as it proposes to rest on Chinese feelings and usages, I would only answer, that I believe the most respectable Chinese inhabitants of these settlements would deny that the proposed indulgence was required by their habits and notions, or was any boon to their population. To the second it might be sufficient to answer, that the existence of one evil is no reason for the toleration of another. But as more weight seems to be attached to it than I can at all understand (I believe Mr. Fullerton even went so far as to represent that the declaration of the illegality of the gambling farm would render it necessary to discontinue those of opium and spirits also, on this very principle), it may be worth while to point out not only that gambling is a legal crime, and that opium smoking and spirit drinking are not, but also that all gaming is an evil, while the other practices are not necessarily so, unless in excess, or at least that no harm can be done by the absolute prohibition of gaming, which at the very best can only be a harmless extravagance; but the use of spirits, or even opium, may be, and often is, a matter of necessity.

44. The weight of the third argument depends entirely, I think, on the amount of crime arising out of gaming, but not consisting in it, which would be prevented by greater publicity; for the whole amount of gambling itself would certainly be rather increased than diminished. With an effective police, this, in small places like these, could not be great; but I doubt the fact of such an increase of crime so occasioned. I have been occasionally referred to the example of Paris, where there are licensed gaming houses, as showing the advantage of the system. I should refer with great confidence to it for the opposite purpose. That the licensed gaming houses of Paris are better conducted than some of the low illicit hells of London, I entertain no doubt; but that the aggregate of crime and misery traceable to the pernicious habit of gambling, the suicides and murders, as well as the ruin and insanity arising out of it, is incomparably greater in Paris than in London, I believe no one who inquires can be ignorant. Much of this may depend on the different characters and habits and principles of the people; but surely much may be traced to the sanction given to gaming by the law, which removes all restrictions of shame, if it does not break down all restraints of principle, and allows men of the gravest character and most venerable station to be the uncensured and uncensuring spectators of scenes which any person of ordinary attention to decency in England would avoid. If, indeed, the principles of the argument now under discussion are to be admitted, I do not see any reason for stopping at gambling houses; the establishment of licensed brothels also would

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would produce revenue; would prevent some of the crimes now committed in low houses of ill fame, and would have the example of Paris to support it.

45. There remains the alleged inefficiency of the present system. Now I have already pointed out as one of the inconveniences of a system of monopolies, that the farmer has nothing to guide his discretion in fully enforcing the law, except the consideration of his own interest. In this manner, undoubtedly, the farmer's peons might be more efficient than the regular police; they would watch many places which the police would think it better not to meddle with. The farmer would seek for information, not merely whether there existed low illicit gambling houses, but whether parties had not, by their private amusements at home, subjected themselves to the penalties of the law. Any officer or merchant might have spies in his house to see whether his guests did not occasionally trespass within the forbidden limits; the members of the government would be exposed to the same inquisition, or if not, only because the farmer would have some foolish or dishonest notion that it was not his interest to be strict in such quarters. No man can be further than myself from wishing to encourage gaming in any class of society, but I do not think this kind of interference would be desirable, nor do I believe it to be wished by those who complain of the inefficiency of the present system; but it would be a probable consequence of the alteration, unless Malay and Chinese gambling are to be prohibited, and English gambling to be legalized, or unless there is to be a general qualification, by property, to break the law.

46. What I believe to be really meant by the objection, however, is, that the police do not enforce the law; that it is better worth their while to be quiet, even in cases where they ought to interfere: if so, it is a great evil; but how would the alteration remove it? or else, why should not the evil be removed without the change of system? I have already pointed out as one of the evils of the monopoly system, the danger that the farmer will rather encourage than discountenance mere oppression on the part of his peons. This kind of efficiency, however, is not, I suppose, what is desired. But if, independently of this, the present police is inefficient in the suppression of gambling, it must be from inadequate force, from inactivity, or from corruption. Now, inadequacy of force may as easily be removed by increasing the police, as by creating a farm, and authorizing the farmer to employ peons; and inactivity, or mere corruption, may be guarded against as well by an active supervision of the police, and a more careful selection of its members by the existing authorities, as by the transfer of a certain portion of their duties to a body of men under the superintendence of a person directly interested in their efficiency. If anything more is meant than this, distinct from the dishonest efficiency already referred to, it must be one of two things, either that the present superintendents of police have their hands too full of other business to be able to give the necessary attention to the conduct of their subordinates, or that those subordinates are so ill paid as to be exposed to corruption, which they would not be in the employment of more liberal private masters; for if it is merely that the class from which these officers are taken is not worthy of confidence on any terms, this would be a great calamity, but it would not be lessened by making them unfaithful servants of a private instead of a public employer.

47. Now I shall offer no opinion whether the establishments here have in fact been reduced to a scale below that necessary for efficiency; but if they have, the remedy is by restoring them to a competent force, not by transferring part of their duties to a mischievous institution. In the same manner, if a private employer could get trustworthy peons by paying them better, but not without it, the government also ought to pay theirs better, and get the best services. Economy is a great object, but it is not economy to put up with bad services because you do not like to pay for good ones. I express no opinion whether the present pay is not adequate to the procurement of faithful services; I only address myself to any argument founded in a supposed inadequacy.

48. On these grounds I entertain the strongest conviction, that a gambling farm would be mischievous as well as illegal, and that the arguments against it are much too strong to be at any time overruled by the mere consideration of the paltry revenue to be derived from it, but especially when the whole revenue system may probably be the subject of revision.

49. The only remaining subject of this letter is, the expediency of establishing a legal copper coinage; I mention it rather to draw attention to it, than to enter into any lengthened discussion of it. I believe it indeed to be desirable, and I think, if well managed, it might be carried into effect without material expense

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to the government, or injustice to the holders of the present coin. There may be material objection, considering the great variety of nations who trade here, to throwing any serious obstacle in the way of their dealings, and there being, I believe, large quantities of the most worthless coin; yet I cannot fancy any of these difficulties insuperable. The evils of the present system are great. At Penang, within three years, the value of the dollar (or, rather, of the pice) has fluctuated from 135 to 105 pice, and the government has been obliged, contrary to their general practice, to receive a large quantity of copper coin, not, I believe, strictly in payment, but at all events in deposit from some of the farmers; and I believe material loss was occasioned by the transaction. The loss to individual holders of such coin must of course often have been very serious, and must be renewed on the present system, whenever it shall please any Birmingham foundry to pour in a fresh supply of the miserable trash that now passes as currency.

These are all the subjects of a legislatorial nature on which I am at present desirous to trouble you. I am aware that no legislative measures can now be taken here; but still you may have occasion to make some suggestions on some of the subjects referred to, or may be consulted upon them; and I have therefore wished to make you acquainted with my own views. Should they coincide with your own, you may probably have some opportunity of acting on them; should you differ from them, you will at least learn from them what sort of opposition your own notions may perhaps be exposed to. I have a few other observations to make, but they had better form the subject of a distinct communication.

I have, &c.

Prince of Wales' Island,
6 July 1835.

(signed) *B. H. Malkin.*

From *B. H. Malkin*, Esq. to the Honourable *Kenneth Murchison*, Esq., Governor of Prince of Wales' Island, Singapore, and Malacca.

Sir,

In my letter of July 6th I mentioned that I should probably wish to address you again. The subjects of this letter will be chiefly of an executive nature, and most of them connected with the court of judicature. There are, however, more general considerations involved, though the transactions of the court have principally been the means of bringing the questions to my notice.

The first I will mention is one to which I have before called the attention of individual members of government, but I have never, I believe, hitherto mentioned it in any regularly official letter. I first adverted to it in a communication made to Mr. Ibbetson, when he had it in contemplation to establish a distinct court of requests for Province Wellesley. I then intimated a doubt, which I still entertain, whether such an act was within the power of the local authorities. Another course, however, was then adopted, and the particular power then discussed is now perhaps of little importance. But the same question, although in a different degree, affects the temporary appointments directed to be made by the Governor in Council of Prince of Wales' Island, Singapore, and Malacca, and these are many and important; the sheriff, coroner, justices of the peace, commissioners of the court of requests, committee of assessors, and most likely some others. Probably these appointments, the propriety of which must depend on local knowledge, may be made by the chief local authorities, notwithstanding the abolition of the government. But I do not feel at all sure that the principle which I very early applied to the judicial functions of those officers would extend to any of an executive nature, especially when, as in other cases, the appointment is not to be made by the Governor or any other functionary individually, but by the Governor in Council, holding a situation and exercising an authority which has now ceased to exist. I continue, therefore, to think the only safe course, till some alteration is made in the provisions of the charter, or, at least (if that would be sufficient), some permanent delegation of these powers obtained from the Bengal government, is to have such appointments made by both authorities; for an appointment simply by the Bengal government would be exposed to objections perhaps equally serious, though different with those which apply to a mere act of the local officers.

The next matter to which I would advert is, the manner in which interest is allowed by the government on money in the hands either of the court or of the

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the savings bank. The two do not stand exactly on the same footing, but the general inconvenience of one part of the present system is the same in each.

In consequence of an application to Mr. Ibbetson on these subjects, he proposed to the Bengal government that four per cent. interest should be paid on these monies when deposited in the Company's treasury. The general scheme of the proposal was acceded to, but with certain modifications; the allowance of interest to the savings bank being made to correspond with the rules of that established in Calcutta, and the court funds being permitted, in common with those of private individuals, to be subscribed into a four per cent. loan, at the favourable exchange of 206 sicca rupees for 100 dollars.

All subscribers to the savings bank therefore are obliged to take government paper for their deposits, if they exceed 500 rupees, and the court funds labor under the same disadvantage, and originally also under that of not being allowed to receive any interest for sums below the smallest government notes, or for fractional parts of 100 rupees above that sum. The latter inconvenience, however, has been remedied by the practice of the court to order all such sums to be invested in the savings bank, an advantage which could not be contemplated in the foundation of that institution, (for it was then supposed that interest would be granted on the court funds without the restrictions afterwards imposed,) but which has proved not the least important benefit derived from it.

The variation however from the original plan has been productive of considerable loss to the parties interested in the court funds, and is likely to produce much more; this is owing to local circumstances, which probably were not remembered by the Bengal government when they directed the alteration. The same spirit of liberality which induced them to sanction the grant of interest at all, would, I think, have prevented them from clogging it with the present conditions if they had known their mischief. Almost the whole of the court funds is in the hands of the accountant-general, in dollars; they are all therefore subscribed into the loan at a loss of about two per cent., from the difference between the exchange directed by the government for these purposes, and that currently obtaining, I believe, under the sanction of the government here. But a further evil arises from the certainty, that from the very limited market existing here for government paper, any large sum can only be realized at a further considerable loss. All sales of large amount will be at a discount; and this seems to me to furnish an answer to the observation in the 3d. paragraph of the despatch No. 103, addressed to Mr. Garling, and bearing date 28th January 1834, which denies the expediency of making any special provision for persons interested in the court funds here; and observes, that the accountant-general may conform to the practice of the same offices at the presidencies of India. There the accountant-general has a market to resort to; he has the chance of buying at a discount and selling at a premium; but here, with the same powers in theory, he has them not in practice. His only way of investing money with promptitude and safety is, to subscribe it into the treasury under the terms of the despatch, and his only way of getting it out is by sale, which is almost certain to be an unfavourable one.

It is also to be observed, that the loss to the parties can very seldom be any benefit to the government; they gain nothing in the payment of interest, for that is paid at four per cent. whether the money is invested in government paper or not; and even the unfavourable rate of exchange gives them no advantage, for of course they pay the interest at the same rate as they receive the deposit; and the same principle will apply to the paying off the note; and the probability of loss in selling the note at a low price is no gain to the government, unless they become the purchasers; but this will very seldom be the case; they will seldom wish it, and the mere fact of their being in the market would probably, where the demand is so limited as here, make a perceptible advance in the price of the bill.

Practically, therefore, we are not asking for any favor for these classes of deposits, which they do not receive on the continent of India; we only wish to be exempted from an inequality derived from the different operation of the same rules under varying circumstances. The same argument might apply, in a certain degree, to all deposits received here, but I do not treat them all as on the same footing. With whatever terms the government may choose to clog the accommodation they afford, it is a short answer to all private depositors, that they are free to accept or refuse, and that they need not subscribe at all unless they like the conditions; but this is not the case with the funds either of the court or the savings bank; they must be invested securely, and they must be easily convertible

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on demand; and there are no means open of investing them so as to satisfy these requisites, except by deposit in the treasury. They are both also entitled to the favor ordinarily shown to charitable institutions, for the court funds belong in so large a proportion to widows and infants, many of them annuitants to a very small amount, and without other support, that they fairly come under the description; and the savings bank has at present the additional claim of being conducted at the expense of private subscribers, though the Bengal government has sanctioned the principle, that the expenses of these institutions should be borne by the public. I hope it will not be necessary here to resort to that principle, for I believe the subordinate officers of the government would not be likely, full as their hands are of other business, to pay so much attention to its details as those persons now separately employed upon them; and the business would probably be cast on them, as it would not be of sufficient amount to warrant by itself any increase of the government establishments; but without wishing to see the present practice altered, we are perhaps entitled to some consideration in consequence of it.

I think it probable that some application, in conformity with the above observations, may in any case be made to the Governor-general in Council; but if you agree with them it will probably come with more weight from the local government than from any private quarter.

In the same letter to Mr. Ibbetson, I called his attention to the expediency of erecting here, as in all other King's Courts in India, a pauper establishment. There may be difficulties attending it, especially at Singapore and Malacca; I mention it however not now again to discuss it, but merely to draw attention to it. There was however another subject, which I mentioned at the same time, to which also I will shortly advert. I then intimated a wish that the table of fees now in force in the court should be modified, particularly with respect to the fees on administrations and probates, and the per-centages paid on petitions, affidavits to hold to bail, and judgments; and also that the government would allow the court, without prejudice to the existing arrangement as to the payment of its officers, to remit or suspend the payment of fees altogether in certain cases, not necessarily connected with absolute pauperism. This last I continue to think desirable; but with respect to the alteration of the table of fees, except with regard to probates and administrations which have been already dealt with, I have not been able to devise any method by which the same amount could be more unexceptionably raised, and I have therefore suggested no alteration. The evils of the present system, such as they are, would be very much diminished by the grant of the power of occasional remittal already referred to.

I should hardly have thought it necessary to mention this mere non-proposal of any change, had not I myself formerly spoken of the supposed pressure of the present system, and had not the grand jury here once referred to the subject as a grievance. I thought it therefore desirable to show that it had not been simply passed over. And while I mention it, I may also draw attention to the practical operation of the change actually made in the administration and probate fees. The benefit has been very considerable, in inducing persons interested in small properties to come forward and obtain legal titles to them. And I believe that the financial effect has decidedly been favourable, rather than unfavourable to the government. If indeed all the parties now claiming administration or probate had made the same claims under the old system, the amount received would probably have been greater under it; but it is quite clear that only a very small number of these claims would have been advanced, and the increase of payment on a few large estates must have been amply sufficient to cover the defalcation on the few small ones, which would on the former plan have been legally dealt with. To the public, therefore, there has been advantage in the more regular course of proceeding introduced; to the government certainly no loss, and probably some gain. No one has suffered, except the court and the registrar's office, which have had a very considerable increase of labour cast upon them.

(A.) I have often had occasion to advert to the very loose manner in which the charter constituting the court of judicature is framed. It would undoubtedly be desirable on this account, and also for the purpose of introducing some powers and provisions which are much wanted, that the charter should be carefully revised. The expediency of doing so has been often talked of, and the task may not improbably be undertaken. I do not wish to enter into any detailed consideration of the alterations which might be expedient, but as it is to be hoped that no change would be hastily made, and if made with due deliberation, the local authorities

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rities would of course be applied to for information, it may not be inexpedient for me to subjoin a list of subjects to which attention might in such case be beneficially directed. In some instances no change might be desirable, but they all seem to me to be worth consideration. I do not here include any suggestions arising on merely technical grounds, which I should probably, in the event of any change, have the opportunity of making, but merely point out matters of general consideration. Some of them would admit, if it were thought desirable, of a more speedy dispatch, of being made the subject of enactment by the Legislative Council; but most of them would require an alteration of the charter, and I have therefore included them all as in some degree connected with each other, and with the court of judicature, in this letter.

It seems to me then very desirable, that either by a provision of a new charter or by an independent alteration of the law, the testimony of convicts should be rendered legally receivable here. Admiralty jurisdiction is confessedly wanted. There can, I think, be as little doubt that it would be very desirable to remove the uncertainty which now attaches to the liability of officers and soldiers to the jurisdiction of the courts here in certain civil matters. It is clear that the existing difficulty would never have arisen unless from the circumstance of these settlements having been forgotten by the framers of the Mutiny Act, when they were providing for the cases of Calcutta, Madras, and Bombay.

There is, I think, not much more doubt that it would be expedient to give the magistrates in quarter sessions the power of trying small felonies with a jury. It would in that case, indeed, be necessary to depart from the present practice of holding the quarter sessions from week to week by adjournments; but in my judgment that change would be in itself an improvement. I am aware of the one argument in favour of the present system, the expediency of an early dispatch of business of small moment; but I have never doubted that much more harm was done by the laxity and inaccuracy introduced, than good by the promptitude. There ought to be as full and careful investigation, proceedings as regularly had, and depositions as regularly taken and returned, on a committal to the quarter sessions, as to the sessions of oyer and terminer. But I believe none of these exist; the preliminary and final investigations are either absolutely jumbled together, or at least the first is very cursorily conducted.

It is very desirable, I think, to make the quarter sessions an independent court. It is now only a peculiar session of the court of judicature; its acts therefore are the acts of that court, which thus loses in most cases the power of inquiring into them. I know nothing else material to the quarter sessions, except the more accurate definition of their power with respect to roads, bridges, &c., and the manner in which the expenses occasioned by their order are to be defrayed. Perhaps it might be well to impose some check on the unlimited power now given to the government of removing magistrates.

It would be desirable to remove the uncertainties which now exist as to the power of the Governor and resident councillor as judges in the absence of the recorder. I offer no suggestions at present as to the most expedient course, except that the provision of page 33 of the charter, that the recorder should always be summoned to meet them, ought to be expunged or greatly altered. It has been retained from the charter of Prince of Wales' Island only, is quite inapplicable to the united settlements, and is practically a dead letter; but it may cause confusion. There may be another matter of very serious consideration, connected with the office of the lay judges. In the present administration of these settlements, everything being finally referred to Calcutta and decided there, it may become a question whether the office of governor is one of any utility, and whether the chief local authority at each place might not now beneficially communicate at once with the Bengal government. This is very little a subject for my discussion, except for the sake of observing, that in case of such an alteration, an alteration of the charter, and completely a new constitution of the court, would become necessary. It is, perhaps, hardly worth while to notice the doubt which has arisen, whether the governor or acting governor, when there are both, has the custody of the seal; which, however, in the event of any alteration, would perhaps be most properly vested in the recorder. At all events, the existing question might be set at rest.

Is there any reason why the judges should be exempted from indictments for misdemeanor?

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I think it worth consideration whether grand juries might not beneficially be abolished. The petty juries, whose functions are far more important, would be improved by the admixture of the present grand juries, and the whole amount of service, which now often presses hard on individuals, would be diminished. A new course of proceeding would become necessary, but this would easily be devised. Perhaps it would be desirable also that a new charter should either exempt particular classes of inhabitants from serving, or else give the court the same power of framing rules to this effect, which the courts at Calcutta, Madras, and Bombay have under the statute 7 Geo. 4, c. 37.

With respect to the process of the court, it would perhaps be an improvement that these settlements should be put on the footing of distinct counties, and a sheriff appointed for each; and also that sequestration of the goods of an absent debtor should be, under due restrictions, obtainable, without the delay of having the preliminary process returned for all the three places. It might also be convenient to have a separate accountant-general at each place. A material saving of expense might be effected by allowing some proceedings which are now required to be under the seal of the court, and to be served or executed by the sheriff, to be exempted from those formalities.

The doubt already adverted to, whether the sheriff and other officers should be appointed by the local authorities or the Bengal government, should of course be set at rest by express provisions in a new charter, as far as it applies to officers acting under its provisions.

The last subject connected with the charter on which it at present occurs to me to make any observation (though in all these communications I fear I may have omitted many things which I have thought of before, and may, if they again occur to my recollection, have to express some opinion or take some steps upon hereafter), are connected with the registrar's department. The great question here would be, whether it would not be expedient to settle and render irrevocable in the new charter the present or some similar arrangement between the Company and the court, by which the officers are paid by salaries, and the fees taken for the benefit of the Company. I believe that such a change, properly and judiciously made, would be desirable. The present system has, I think, been found to work well; its advantages are obvious; and I have not heard of any objection to it, except a supposed loss of money to the Company by receiving less in fees than they pay as salaries. I do not know the exact state of this account, but a mere balance-sheet of sums actually received and paid, will not show it; and I believe when, in addition to the fees actually received, allowance is made for the exemption of the Company from fees in their own cases and in criminal business, for which as an expense necessarily incidental to the court, they are bound to provide, they would not be found losers in the general result.

It may appear, however, that the present arrangement, without any alteration in the charter, gives all the benefits sought for. It gives them, but it does not secure them. The existing arrangement is one which either the Court of Directors or the court of judicature can at any time, giving reasonable notice, annul. It is not, I hope, likely to be annulled; I do not think the court of judicature is likely to propose its abandonment, and the recent decision of the Court of Directors in favour of a large proportion of Mr. Kerr's claim upon them, seems to show also that they do not wish, even prospectively, to depart from it. But the greatest evil of the administration of India seems to me to be a want of fixedness. It is an evil perhaps almost inseparable from government by a fluctuating body; but it renders everything uncertain. While it exists no one knows what are his prospects or expectations, and the power of getting good and faithful service is very much affected by this ignorance. Many a man might be induced to enter the service of the government and of the Court, even in the lower situations connected with them, if he knew that with good conduct he was secure of the salary offered him, and had the chance of promotion, who will prefer any other employment when he knows that he is likely to be suddenly reduced to a small portion of his former allowance, after long service, and without fault. I do not mean that over-payments ought to be continued merely because they are old; that any system of payment ought not to be liable to occasional revision, with due regard, however to the claims of persons actually employed; but the general presumption should be in favour of what exists. Alteration is evil in itself, and the burden of proving an advantage lies on those who propose, not who resist a change.

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It may be said that reduction of expense is *primâ facie* that advantage which I require as sufficient to authorize a change, and casts the burden of proof on those resisting alteration. It is a fact on that side of the question undoubtedly, but not by itself enough. The more extravagant the reduction, the stronger the argument from mere reduction becomes; yet a diminution of a tenth in the salary of an officer might seem *primâ facie* reasonable, when every one would at once treat a diminution of three quarters as absurd. The problem, therefore, is a complicated one, and must be dealt with as such.

Although, however, these general considerations may be applicable to the principle consulted by the alteration I suggest, they have comparatively little bearing on the particular question. The feeling of security is desirable, and it is as much destroyed by petty as by material fluctuations; but I do not think it probable that any one who takes the trouble of making himself acquainted with the duties performed by the subordinate officers of the registrar's establishment, and the qualifications required for their proper discharge, would wish, except, possibly, in a manner which I shall presently advert to, to introduce any material alteration. The highest emoluments of the registrar's clerks at present are not at all more than sufficient to give the court a fair likelihood of commanding the services of gentlemen of that education, integrity, and diligence which are required for the principal situations in the registrar's offices, and which their present holders, I am happy to say, possess. In looking to what is required, it may not be superfluous to advert to the facts, that at Malacca and Singapore a large portion of the registrar's business is carried through by his chief clerk in his absence; that if it has not lately been so at Prince of Wales' Island, the difference has arisen merely out of the accident of my chiefly residing there, and of the other judges of the court having for that, or any other reason, generally abstained from transacting any business during my absence; that besides this, the longer establishment of a court there, and the more complicated matters with which it has had to deal, have made necessary an intimate knowledge of multifarious and minute details contained in its earlier records, to which nothing analogous exists, at least at Singapore, and which fully counterbalances the greater independence and responsibility of the chief clerks at the more recent settlements, which also, as already observed, is only an accident; and lastly, and chiefly, that it is very desirable that the chief clerks should be fully qualified, in the event of any occasional absence of the registrar, to discharge his duties, and on the absolute vacancy of the office, to furnish a successor. No persons so competent are likely to be usually found, though an individual of paramount claims might occasionally be discovered and appointed.

There is, however, one change which might perhaps be beneficially effected hereafter without increase, and possibly with a trivial reduction of expense. It is a question of doubt and difficulty, and I have no decided opinion on it; but I think it worth consideration, whether, upon an average, the duties of the registrar's office might not be better performed by a separate registrar at each place than by one general registrar of the court. The local registrar would of course be more highly paid than the existing head clerks, and the office would therefore be likely to command a higher rate of qualification in the holder. It is not very probable that the augmented salary would procure services more valuable than those of the present chief clerks; indeed, they would probably be considered to have a strong claim to the supposed offices. But I do not know if any vacancy should occur among them, that the present salaries entitle us to expect equal competence and character in their successors. On any remuneration at all likely to be offered, it would be no ill fortune to be so well supplied. On the other hand, the larger emoluments of the single registrar might occasionally secure the services of a man of higher pretensions, and more independent station, than any who could reasonably be expected to be a candidate for the mere local situations. The balance of average advantage it would require much thought and judgment to determine; but the question is, at all events, very fit for consideration.

It is, perhaps, hardly necessary for me, in addressing any local officer, to mention that any such alteration is only desirable, if at all, when some change becomes unavoidable. While matters can remain as they are, it would be the greatest folly to disturb them. Mr. Kerr's long services, his intimate knowledge of the proceedings of the court for nearly 20 years, his accessibility, his legal information, his acquaintance with the habits and feelings of the people, his sound judgment, his elevated character, and the confidence he enjoys as well as deserves, will render his vacating the office he holds the greatest calamity which can befal the community

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community of these settlements. No speculative or pecuniary advantages which could be derived from a change would be any compensation for its causing him to discontinue his services sooner than otherwise he would; such an alteration as that suggested, even if on the whole desirable, should therefore be carefully postponed till Mr. Kerr has ceased to hold his present situation. The expediency of innovation at all is matter of serious doubt and question; the mischief of immediate change seems to me to admit of none.

A new charter, however, might easily provide for the retention of the present system while Mr. Kerr continues in office, and either legalize or compel the alteration of it after that time. Even if the suggestion were adopted that the salaries of the different officers should be fixed by the charter, there would be no difficulty in continuing and establishing the existing arrangements under the present circumstances, and making other provisions prospectively.

In an inferior degree, the same considerations apply to the other officers engaged in the service of the court, though not now forming a part of its establishment, the interpreters, crier, swearers, &c. At present they are merely supplied to the court by the government; the court therefore cannot interfere in the regulations of their salaries, or the selection of the individuals, except by requiring competent officers, chosen with a decent regard to character and situation. On a recent occasion, indeed, when a reduction of most of these salaries took place, I felt entitled, as an individual, to point out to Mr. Church, with whom I believe the measure originated, certain considerations which he appeared to me to have overlooked, and certain arguments which I thought he had neglected. But as a judge of the court, I had no power of interfering, and was not in fact in any way consulted on the subject. The measure was suggested to the Bengal government, and adopted before I even heard of its being in contemplation. I make no objection to this: it was in the discretion of the government. I should indeed have supposed beforehand that the information of the judge, who principally presides in the court, and of the registrar who superintends the chief business of his office, might have supplied some material facts; and the only reasons which I have known advanced in support of the alteration, have certainly not convinced me that such information was superfluous.

Without entering again into any discussion of that question (on which I suppose the opinion already intimated by me can easily be referred to, as I requested Mr. Church to communicate it, so far as its unofficial character would allow, to the functionaries who had finally to carry into effect, or to modify the proposed reductions), I may again express my own unchanged conviction of the inexpediency of a very large portion of those changes. I do this, not for the sake of volunteering an unnecessary declaration of dissent, but because these alterations furnish a very material part of the argument on which I may, and very probably shall rely on any occasion which may offer, to show the expedience of departing from the existing system, as to the appointment, dismissal, and remuneration of these officers. It is a question of opinion, but my own decided belief is, that the present system, as lately acted on, is not likely to secure competent services. In saying this, I refer not so much to the actual lowering of the salaries, though a large proportion of those proposed in the recent scale of reduction are in my judgment unreasonably low, as to the manner in which everything like certainty or confidence is removed. What likelihood is there that a man of tolerable fitness can be induced to accept (for it is a very different question how far, and how fairly an actual holder may be forced by circumstances to retain) a situation of small emolument, with the knowledge that it merely depends on the pleasure of any new governor to make a display of economy by reducing the pittance he receives, and that even 25 years' service, with a peculiar competence and ability derived from it, is no security against the immediate diminution of more than half a salary? And it is to be observed that in many of these cases continued service is most important. No officers more want practice than interpreters.

It is easy to say that there is no real danger of mischievous alteration; that any thing unreasonable will be disapproved in Bengal; but the Bengal government of themselves know nothing about the case except the net amount of reduction, and receive their information as to the expediency of the particular changes only from their servants who have devised them. Besides, how are these subordinate officers to make known their claims? how to be supported during the period of suspense before a decision? Have they any assurance that representations made by them, or on their behalf, will be brought before the Bengal government at all, if they fail

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to raise doubt in the minds of the local authorities? or if submitted by any other channel, will not the delay occasioned by the necessity of referring to the officers of government on the spot render the period of uncertainty yet longer and more ruinous? Is it even certain that a party making such an appeal would not be dismissed for his contumacy in remonstrating, or that he would not be prevented from so appealing by the fear of such a consequence?

I cannot ask such questions as some of these without feeling that apology may seem to be due for them; I do not however ask them with reference to particular individuals. I hope that none among those who may now or hereafter have the power would be disposed to act in the manner suggested; but I have left England too recently not to feel that upon such subjects the tone of feeling and opinion is very different there and here. I cannot but see that power and right are confused together here, in a manner in which nobody confuses them at home; and where the principles of judgment are different from my own, I cannot feel very certain of the conduct which will correspond to them. Long habits of domination; the subordination of a timid and inferior people; the quitting England before English habits of thought and action are formed, may account for the difference which I seem to myself to trace as decidedly in the conduct of Indian governments to their own officers and servants, as in the more limited and lower sphere of my own personal observation. But the difference unquestionably exists: there is a tone in the opinions of the privileged orders of Indian society, which at least tends to an arbitrary course of conduct, and I therefore feel justified in alluding to arbitrary measures as possible, though I should hope very improbable, in practice.

What extent of change would be advisable on these grounds I am not at present prepared to say: it might be sufficient to fix irrevocably the salaries of these officers; it might be more expedient to give the court, instead of, or concurrently with the government, the control of all matters connected with their appointment and dismissal, and if that were not completely fixed, their remuneration also; it might be better to place them on the footing of the registrar's clerks, appointed by him individually, but subject to the approbation of the court. I offer no opinion which or what combination of these plans would be the best, but any of them would, in my judgment, be an improvement on that now in operation.

Before concluding this letter, I would shortly advert to the sessions of oyer and terminer lately held by Mr. Bonham and Mr. Wingrove at Singapore. I observe that Mr. Bonham, in his charge to the grand jury, according to the note of it in the Singapore Chronicle, which bears the appearence of being a trustworthy representation, mentions it to be his opinion and that of Mr. Wingrove, "as well as the honourable the recorder, that, under certain limitations, it is expedient that the court should sit and act in the manner" which it did. This statement of my concurrence is perfectly correct. I do not know that, without entering into needless detail, my opinion could be more accurately represented; and yet I think it may give rise to a supposition that my views and Mr. Bonham's on the subject coincided more completely than I believe they do. They differ, I am afraid, in two respects; first, with regard to the "certain limitations" within which it is desirable that the power should be exercised; and secondly, and more materially, with respect to the principle on which the expediency is to be determined. On the first subject I will enter into no detail, merely stating my own impression that a limitation to offences, the punishment of which could not exceed seven or 14 years' transportation, with or without a proviso including cases of manslaughter, in the power given, would have been preferable to the limitation selected of all cases not capital. I have no notion that the course adopted has been undesirable in the present case, or is likely to be, except in some instances; but I cannot but think that if the present becomes a customary limitation, the lay judges of the court may easily have questions to try occasionally, which they would be very glad, but would not have the power, to postpone. Among the cases included in the present power I would refer particularly to charges of breaking by night into the curtilage of a dwelling house; of stealing from the person, without violence; of coining, and above all of forgery, as hedged round with legal difficulties. But the great difference between us lies in the principle on which the power in question is to be given. I should collect from Mr. Bonham's charge, and I think I know it from the tenor of his communications with myself on the subject, that he thinks he ought to try all cases, criminal and civil, which there is not distinctly some reason for his refusing; that the cases which are postponed or excepted are the exception to the general rule. In my opinion the general rule is, that cases are to

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to be left till the recorder is present, except where there is distinctly serious inconvenience in the postponement.

The practical difference, especially in civil cases, where there are greater powers both of postponement and revision, may be very little; for I have no doubt that in my own application of my own views the exception would very generally be larger than the rule; and that in very few, if any, cases tried at Singapore in the absence of the recorder, it would be thought by me desirable that his presence should have been waited for. But the principle is an important one, and seems to me to admit of little doubt. In saying this, I have nothing to do with any question which may be raised as to the advantage of having a King's court at all, or a professionally-educated judge. I believe the continuance of such an establishment to be desirable, but my opinion on the present subject is not founded on that belief. We administer justice under the King's charter; and doing so we are, I apprehend, bound to administer it in conformity with the principles of that instrument; and it seems to me to be impossible to read it, without seeing that the object of the grantors of it was to secure the benefit, as they considered it, of the attendance of the professional judge in all cases where there was not some paramount inconvenience to render it inexpedient. Provisions were made to meet such cases; but, as I understand the charter, they were intended to apply to such cases only. And if so, the question is as I have stated it, is there any material harm in leaving such a case or class of cases for the arrival of the recorder, nor is there any harm or danger in trying it in his absence. The practical result, as I have already said, may not often be different, but in cases which are near the dividing point, the division may very probably be one way or the other, as the one or the other principle is adopted.

Letters of April 27 and May 30.

I subjoin to this letter a copy of some observations recently addressed by me to the commissioners of the court of requests at Prince of Wales' Island. They require no explanation, all the facts on which they depend being stated in them. The circumstances adverted to seem to furnish some matter for consideration in the event of any revision of the rules or proceedings of those courts, and may possibly be worth attention, even with reference to the existing practice at Singapore and Malacca, as well as here. I therefore transmit the papers to you, though not strictly or immediately connected with your official duties. I have not yet received any answer to the second paper, probably in consequence of Mr. Church's illness, so that I have no means at present of saying whether the suggestions contained in it are likely to be acted upon.

I have, &c.

Prince of Wales' Island,
7 July 1835.

(signed) *B. H. Malkin.*

(No. 689.)

From *G. A. Bushby*, Esq. Secretary to the Government of Bengal, to *G. A. Bushby*, Esq. Secretary to the Government of India, General Department.

Sir,

General Department.

I AM directed by the Honourable the Governor of Bengal to transmit to you the accompanying letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 28th July last, together with the two original papers mentioned therein, addressed to him by the Honourable Sir Benjamin Malkin, and to request that you will lay the same before the Honourable the Governor-general of India in Council.

I have, &c.

Fort William,
2 September 1835.

(signed) *G. A. Bushby,*
Secretary to the Government of Bengal.

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(No. 112.)

EXTRACT from the Proceedings of the Right Honourable the Governor-general of India in Council, in the General Department, under date the 9th August 1837.

Legis. Cons. 11 Sept. 1837. No. 2.

(No. 269.)

To the Honourable Sir *B. H. Malkin*, Knt.

Honourable Sir,

THE Governor-general of India in Council has lately had under his consideration the condition of the settlements of Prince of Wales' Island, Malacca, and Singapore, which have now for some years been incorporated with the presidency of Fort William in Bengal, but of which the administration is of necessity conducted upon a very different system, requiring revision in every department. General Department.

2. In the consideration of this subject his Lordship in Council has derived much benefit from the notes and observations communicated by you to the government before quitting the situation of recorder of His Majesty's court for those settlements, which was held by you for a considerable period.

3. Amongst the matters which have occupied the anxious attention of the government, is the best means of providing for the administration of justice, both civil and criminal, to the mixed population of these settlements, and in particular whether His Majesty's court can by any means be made more efficient and less expensive, or other judicatories can be provided to perform the whole, or part of the functions now vested in that court.

4. The Right honourable the Governor-general has recorded a Minute in which the various branches of this question are discussed in some detail. Before, however, determining upon the proceedings proper to be instituted thereupon, it is the wish of his Lordship in Council to benefit further by your experience. I have accordingly been directed to furnish you with an extract of so much of his Lordship's Minute as refers to the administration of justice in the Straits settlements, and to solicit, if you see no objection to making the communication, your opinion on the several propositions discussed therein, with any suggestions that may occur to you as proper to be offered to the consideration of the Council, either in its executive or legislative capacity.

I have, &c.

Council Chamber,
5 July 1837.

(signed) *H. T. Prinsep*,
Secretary to Government.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 5th instant, enclosing extracts from a Minute of the Governor-general, bearing date the 9th of February last, and desiring my opinion on the several propositions discussed therein. The Minute naturally divides itself into two parts, propositions of immediate legislation here, and suggestions of alterations in the general judicial system of the settlements in the Straits, to be recommended for adoption by competent authority in England. The considerations affecting the latter subject are more complicated and depend more on detail, and therefore require more time for their discussion than those which attach to the former. It will therefore, I apprehend, be more convenient, as the two are perfectly distinct, for me to postpone, for a very short time, I hope, the notice of the more complicated question, and to offer without delay the few suggestions which occur to me with reference to the other, which, as it is brought forward for immediate action, is much the more urgent.

On the alterations proposed for immediate introduction, however, with one exception, I have hardly anything to observe, as I have on a former occasion expressed my opinion of their expedience. There are one or two matters of detail only on which I will beg to offer a few suggestions.

The plan of constituting a court of petty sessions, with powers analogous to those of the quarter sessions in England, appears fully to meet the inconveniences with reference to which I had suggested the empowering the magistrates in quarter sessions to try small felonies with a jury; and to avoid the difficulties arising from the constitution of the quarter sessions, as a peculiar session of the court of judi-

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cature, I would only suggest for consideration, whether it would not be expedient to except from their jurisdiction perjury, and some misdemeanors, especially the obtaining of goods under false pretences, and some other cases of frauds and embezzlements not treated as felonies, on which difficult questions may occur, and severe punishment in case of guilt ought to be inflicted. Indeed it is difficult to assign any reason why, if the petty sessions are not to try felonies except where six months is sufficient punishment, they are to be empowered to try misdemeanors without a similar limitation. There is another difficulty attending this part of the arrangement. If the petty sessions have an unlimited power to try all felonies, not capital, or all felonies falling within any other limitation which may be adopted, but are disabled from inflicting punishment beyond six months' imprisonment, or such other measure as may be fixed, the committing magistrate would have a large discretion, of very difficult exercise, in committing for trial at the petty sessions or before the court of judicature; and if he exercised it unwisely, or with too much lenity, many serious offences would receive very slight punishment. If, on the other hand, their power of punishing is not limited, or not limited so closely, but the extent of fit punishment is still made the criterion what cases are to be within their jurisdiction, the committing magistrate has still the same discretion—for it is not easy to say in whom else it can be reposed—with the additional possible anomaly, that he may commit for an offence as not requiring more than the limited punishment, and the petty sessions, on new evidence, or from difference of opinion, may punish to an extent, the supposed disproportion of which to his offence furnished the reason for subjecting the criminal to their jurisdiction. It would, I think, be very desirable, if possible, to define more accurately the cases cognizable by the petty sessions, and the latitude to be allowed to a magistrate in committing for trial there, or in the sessions of oyer and terminer.

The appointment of separate local accountants-general is, I apprehend, desirable, though of no very great importance. The accountant-general, receiving no emolument, can make no provision, except by application to personal friends, for the discharge of his duties where he is not personally present, and is himself liable, for the court can know of no one else, for the acts of parties over whom he has in fact no control. It would be desirable also to get rid of the necessity of the accountant-general's being in the service of the Company.

It seems worthy of consideration whether the doubts as to the authority by which the sheriff, coroner, and other officers should be appointed, could not be best removed by allowing the local authorities to make the appointments, subject to confirmation by, or reserving a veto to, the Governor of Bengal. I do not know to what extent this might be inconsistent with the practice of the government, and the difference is not of importance enough to make it worth while to introduce a material anomaly. But if there be no strong objection of this kind, it seems more convenient, looking especially to the uncertainty and tardiness of communication with the Straits, to render it unnecessary to resort in the first instance to Calcutta for appointments, which must generally be made upon local information, and which, in case of emergency arising from death or disqualification, the local authorities must have the power of filling up by temporary acting appointments. In the event of the death of the sheriff, the whole process of the court would be stopped for months, if it were necessary to announce his death at Calcutta, and procure the appointment of a successor thence; for the authority of his deputy, even while there continues to be a deputy, ceases with his own, and the provisions for awarding process to other persons than the sheriff extend only to the case of his being a party, or disqualified by relationship, or other good cause of challenge.

These are all the observations I have to make, except with reference to the subject of legislation as to the succession to landed property.

It is not now quite accurate to state, as is stated in para. 425 of the Governor-general's Minute, "that it has not been yet judicially decided how the real property of Asiatics descends" in the settlements in the Straits. No decision indeed has been had, as far as I am aware, precisely on a question of inheritance; but the general principles were brought into question, and determined, as far as my opinion could determine them, in two cases which occurred not long before I quitted the Straits. In one of these, the rights of a Dutch widow at Malacca came under discussion. The principal question was as to the construction of her husband's will; but that failing, under circumstances of the estate, to give her any beneficial interest, it became necessary to determine her rights independently

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of it; and they were held to be those of a widow according to the English law, not the Dutch law formerly received at Malacca. The second was a case with reference to the will of a Mahometan, in which I have a full note of the judgment I delivered, which I annex to this letter, as containing a fuller discussion of the question of law involved than I will insert in this letter. The opinion of Sir Ralph Rice, there referred to, is contained in his evidence before the Select Committee of the House of Lords, on the Affairs of the East India Company, in 1830.

The principle of those decisions of course applies to questions of inheritance also, which therefore cannot now be considered as entirely untouched by judicial determination. But were it so, I do not apprehend there could exist much uncertainty on the construction of the charter; nor do I understand the Governor-general's views on that subject at all to differ from my own.

There is a wide distinction between the law of procedure merely, and the law by which rights are constituted and determined. On the former I need at present say nothing, as I shall be under the necessity, in my next letter, of making some statements on that subject, entirely I believe in concurrence with the opinion expressed by his Lordship as to the proper mode of carrying the charter into effect, but much at variance with the information he appears to have received as to the manner in which it has been actually administered. But with respect to the law whereby rights are constituted and established, I understood the Governor-general to consider that it at present is, and ought in general for the present to continue, the law of England, modified indeed by considerations how far some of its particular provisions and enactments are suitable to the circumstances of the colony, and administered in all cases with a large and liberal regard to the manner, usages, and religions of the different nations subject to its operation, but containing no provisions or principles which cannot be based upon that law so modified and construed. None of the provisions giving the Hindoos and Mahometans subject to the jurisdiction of the Supreme Court here, and at Madras and Bombay, the benefit of their own laws in certain cases, extend to the Straits, where it is clear that only one law is established for all inhabitants, to whatever extent the application of that law may be different, from consideration of the different institutions of the various classes of residents there. It is true that the court is "to pass judgment and sentence according to justice and right;" but justice and right must always be just and rightful administration of the law which actually exists; and eminently so in the case of succession to property, where there is no general and antecedent principle, but the right is necessarily the creature of arbitrary institution; and the just administration of the law can therefore only signify the correct interpretation of the established rule. Indeed the words referred to, occur in the charters of all the supreme courts on the continent of India, as well as in that of the settlements in the Straits, and have never been considered to affect the question what law those courts were to administer.

If I am right in these views, it follows that all land held by tenures, amounting by the terms of the grant to a freehold interest, passes not to the executor for the benefit of the next of kin, but to the heir at law. Who this heir may be, may occasionally depend on considerations of native usage and religion. These probably ought to be more liberally regarded in questions of legitimacy and relationship than almost in any other. It would seem very difficult, for instance, to refuse to treat a Hindoo son by adoption as a son, and consequently as an heir, in the absence of other sons; or to declare the eldest son of a Mahometan not to be the heir, because his father had two wives at once, and he was the son of the second marriage. But whatever degree of accommodation might in such cases be given to the usages of different classes, the foundation of the law remains the English law of inheritance; and all titles which have been deduced on a different supposition are imperfect, and require confirmation.

Indeed, even if I am wrong in my construction of the law, the necessity of some such measure as that suggested in my letter to the Right honourable Charles Grant, to which reference is made in the Minute of the Governor-general, remains nearly unaffected. Among the English settlers, at all events, even if all classes are to be held entitled to their own laws, the English law of inheritance would be the rule according to which their freehold estates would devolve; yet such estates have generally, I believe uniformly in cases of death, been conveyed by the executor or administrator. Among the native inhabitants, conveyances have not unfrequently, I believe, been taken (especially before the law requiring registration, and the practice of the Government officers, mentioned in the letter already referred to, of

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refusing to register grants not made by an executor or administrator) from the parties considered to be beneficially entitled, on the supposition of the application of their own law. One class or other of these conveyances must be invalid, even if the English law of inheritance (administered as already suggested) is not considered to obtain; either the conveyance by the executor or administrator is void, because his interest is unknown to their law, or the conveyance by the parties beneficially interested is invalid for want of the executor's being a party, if the legal title resides in him. In this case, there might indeed be a good equitable title, but the legal title would necessarily be imperfect.

On any construction of the law therefore, it is of the highest importance to pass an Act, establishing and confirming in the most absolute manner all titles with respect to which no litigation exists at the date of the Act, and which would be good if either the heir at law, the executor, or administrator, the persons beneficially entitled to the property on the supposition of its being personalty or a chattel interest, according to the law of England, or the persons entitled according to the law of the country of the deceased person, had the right of conveying. It would be desirable also to confirm to all such venders the purchase-money which they have received; and it is of great consequence I think that such an Act should pass before the institution of any inquiries, such as those contemplated by the Governor-general in the 425th paragraph of his Minute. It would be very difficult to institute such inquiries without disclosing fully the nature of the present difficulties, but impossible to do so without drawing attention to the existence of some difficulty on the subject; and the whole fabric is so rotten, on any construction of the law, that attention cannot be seriously drawn to the question without setting in motion all the doubts which it is so desirable to quiet, and unsettling all the titles which it is wished to establish.

But I think it is very desirable to go farther. A law merely quieting existing titles, and leaving the law of inheritance or succession doubtful for the future, would do but part of the good required; and even if there is no doubt, there might be considerable anomaly and awkwardness in a law which, establishing all titles derived on one understanding, left a rule in existence completely at variance with that understanding, and left it only for a time, with the strong probability that, upon inquiry, a new law on the subject would shortly be introduced. It is therefore very desirable that any Act confirming existing titles should be accompanied by provisions determining the law for the future; and although inquiry ought generally, and naturally, to precede such legislation, I cannot but think it would be beneficially dispensed with here.

The mischief resulting from such an inquiry before the confirmation of existing titles, and the inconvenience of separating such confirmation from any legislation intended for the future, I have already sufficiently stated. These, however, would not be enough to warrant legislation without investigation, if I felt that there was much difficulty as to the nature of that legislation; but it seems to me that the provisions of the recent Act concerning Parsee property would so well suit the circumstances of the case, that they might be at once adopted without danger. It is only at Prince of Wales' Island, and probably at Malacca, that they would have much operation; for all the grants at Singapore are for terms of years only, and are therefore already chattels real.

The only objections to the establishment of such a law seem to be these, that it would be better to give completely to each class of inhabitants their own laws and customs of descent and succession; that the existing law of inheritance, treating that as the law of England, is preferable; or that some other law might be framed, better adapted to the circumstances of the Straits, as a rule of general adoption.

With respect to the first of these, I need not say more than I have already stated in the letter so often referred to, as to the exceeding inconvenience of giving their own law to all the members of a population so various, and so mixed, as that of the settlements in the Straits. Nor do I think much argument can be adduced in favour of the second course, that of confirming or continuing the English law of inheritance: it is only to the English settlers that this course could, with any degree of probability, recommend itself; and it would, in fact, be as remote from their practice, and as alien from their notions, as from those of any other inhabitants of the settlements.

The third objection to immediate legislation is, undoubtedly, of more importance. It is, however, to be observed, that the laws and usages of all the nations

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to be found in the Straits settlements, except the English, and the practice and understanding even of the English themselves, are adverse to any principles of primogeniture or undivided inheritance, and recognise some rule of partition. Now no rules of partition, especially if administered on the principles of the charter (which need not be abrogated on this subject), with due regard to the manners, usages, and religions of the different parties subject to their operation, can differ very widely from each other; they all must generally favour the same objects, and in a large proportion of instances, where the different claimants all stand in the same relation to the deceased, they will probably all favour each in the same degree. The principal differences among the rights of members of the family will arise upon those assigned to widows on the practice of division *per capita* or *per stirpes*, and on the distance to which the principle of representation is to be carried. Besides this, in some instances certain classes of religious advisers and of spiritual uses might lose a benefit to which, under the complete introduction of the law of the parties, they would be entitled. Nothing, however, short of that complete introduction could save the latter rights, which certainly would not be protected by any measure of general legislation; and with respect to the family rights, differing as they do among the different nations in question, some classes of inhabitants must of necessity, on the establishment of any general principle, find their own institutions more nearly assigned to them than others. There is no injustice done to any of them; for the introduction of any law of partition will bring their legal rights much more nearly into conformity with their own notions than at present; and the precise degree in which different classes receive this benefit is a matter of comparatively little importance, if the law is such as to work conveniently for all; it at least requires much less scrupulous determination than ought to be bestowed on the abrogation of an existing law. Here no law has had any substantial existence; the law not having been followed, the usage having rested on no authority.

There remains one consideration common to all the objections I have noticed; I mean, the extent to which their importance is diminished by the existence of the full and unfettered power of disposing of all property by will. Where this exists, the question of the rule of inheritance is deprived of much the greater part of its importance. It is not indeed immaterial, either in its direct operation on property with respect to which no will is made, or in its indirect effect in influencing the opinions and habits of a people, and guiding them in some degree even with respect to the dispositions made by themselves. But giving full effect to these considerations, still they raise questions of policy only, not of right; and questions requiring no local inquiry, for they must turn on the general preference to be given to one principle of succession over another.

For these reasons, it seems to me that the mischiefs incidental to local inquiry, in this particular case, outweigh its advantages; and indeed, that the advantages amount to little more than the appearance of adhering to a correct general principle. I should not, however, wish to press this conclusion so strongly as I am now anxious to do, were it not for the peculiar circumstances of the present time, which seem to furnish a reason for departing from the ordinary course. The mere fact of Mr. Young's mission to the Straits, drawing attention as it must do to the general condition of landed tenures there, greatly enhances the necessity of immediate retrospective legislation for the protection of existing titles: the necessity of such legislation makes it at least very desirable that the rights of succession to land in future should be determined at the same time; and the presence of Mr. Young in the Straits, for the purposes of inquiry and examination, insures the fullest information on the working of any measure adopted. If, therefore, the effect of legislation without the usual precautions should be to work any evil or injustice, of which I entertain no apprehension, there is the best security for its ascertainment or redress.

I have only now to request you to communicate these observations to the Governor-general in Council, and to apologise, I fear with too much reason, for their unexpected length. In the present state, however, of the business of the court, I could not find time to condense and reconstruct them without occasioning more delay than I should wish on a matter of immediate consideration.

I have, &c.

Allipore, 17 July 1837. (signed) *B. H. Malkin.*

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Copy Judgment in the Goods of Abdullah, deceased, 31st March 1835.

This was an application to set aside the administration granted to the widow of the deceased, a Mahometan, and to admit an alleged will to probate. There was no dispute as to the execution of the paper treated as a will; but it was urged on the part of the widow that the will was inoperative, as not being conformable to the rules of the Mahometan law; the fact that it was not so conformable is admitted, and the only question is, whether for that reason the will ought not to be admitted to probate.

It would be sufficient for the decision of the present case to observe, that the will is only at variance with the rules of the Mahometan law, inasmuch as it professes to pass the whole property, and by that law, the power of the testator to bequeath his property extends only over a third part of it. As to that third part, the testator has not exceeded his power, and the will is at all events good *pro tanto*. The consequence is, that the administration granted to the widow must be revoked, as having been obtained on the supposition that there existed no will at all; and the will must be admitted to probate (or rather, as I will mention hereafter, a course slightly different adopted), as being an authentic instrument, of some force and validity; the question, to what extent it will be operative, remaining unaffected by the mere fact of such admission. This result seems too obvious to require any authority to support it; but such authority, if wanted, will be found in the case of Syed Ally *v.* Syed Kullee Mulla Khan, Sir T. Strange, Rep. II., 180.

As a general rule, I have been unwilling to express any opinion on points of law not necessarily coming before me for decision. And accordingly, in several cases, where the same principle as that contended for in the present case has come incidentally in question, I have avoided expressing any opinion upon it; the parties in some instances having all wished their own law to be carried into effect, and the only question having been what was its true interpretation, and in others the party insisting on the benefit of his own law, having clearly failed to make out a claim, even upon his own principles. I am not willing, however, to avoid declaring my opinion in this case; partly because the expression of it, though not necessary to the disposal of the present application, may prevent the parties from having recourse to farther litigation, which otherwise must almost necessarily ensue; and partly because, as the question is not very likely again to be raised before me, I should be unwilling to have it supposed, as it easily might, from my having sometimes avoided its determination, that I felt it to become of any considerable doubt. I, indeed, have in substance expressed my opinion upon it before; and for that reason also, I am the less unwilling now, without absolute necessity, to declare it.

I refer to the case of Rodyk and others *v.* Williamson and others (24th May 1834), in which I expressed my opinion, that I was bound by the uniform course of authority to hold that the introduction of the King's charter into these settlements had introduced the existing law of England also, except in some cases where it was modified by express provision, and had abrogated any law previously existing. I intimated much doubt, indeed, whether I should have agreed in such a construction of the effect of a charter had the question been a new one; but I felt bound by the weight of authority, and decided against the continuance of the Dutch law at Malacca accordingly. The Mahometan law can stand on no better footing, unless by the express provisions of the charter; for the statutes giving the Mahometan and Gentoo inhabitants within the jurisdiction of the King's courts at Calcutta, Madras, and Bombay the benefit of their own laws, apply only to persons so resident. The bulk of the inhabitants of India are otherwise protected.

It may be worth while, however, before adverting to the terms of the charter, to observe that though the Mahometan law cannot, independently of them, stand on a better footing here than the Dutch law at Malacca, it may very easily stand on a worse. To place it on the same, it would be necessary to prove that it existed, not as the custom of a particular portion of the inhabitants, but as the law of the place, up to the time of the first charter. I believe it would be very difficult to prove the existence of any definite system of law applying to Prince of Wales' Island or Province Wellesley previous to their occupation by the English; but that law, whatever it was, would be the only law entitled to the same consideration as the Dutch law at Malacca; indeed, even that would not in general

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policy, though it might in strict legal argument; for there might be much hardship in depriving the settled inhabitants of Malacca of a system which they had long understood and enjoyed, but more in requiring the persons who resorted to these new and almost uninhabited districts (for such they were when we got them) to conform, as settlers must, unless there is an express exception in their favour, to the law of the land they settled in.

I have said that I consider myself as having, in substance, disposed of the present question in the case Rodyk *v.* Williamson; for all the arguments applicable to the present case would have applied to that also, the laws, customs, &c. of the Dutch being just as much preserved to them as those of any other class of inhabitants, except inasmuch as they may be less repugnant to the English law, and therefore less frequently affected by its introduction, and the Dutch law being also, which perhaps the Mahometan law might be proved to have been here, but that would be a matter of evidence, the law of the country before the charter. The latter argument, however, was disposed of in that case; nor was it there contended that the general words of the charter, saving the different inhabitants their several religions, manners, and customs, had the operation now ascribed to them.

Nor, in my opinion, can any such operation be sustained. If the question were entirely a new one, it would seem to me to admit of very little doubt. The operation contended for is quite unlimited: it gives to all the inhabitants of these places the full benefit of their own laws, religions, and customs; for no line is drawn to confine the effect of the words relied on, either to any particular nations, or to any particular rights. The effect contended for therefore goes far beyond the state of the law at Calcutta, Madras, or Bombay, where the benefit, if it be one, is confined to Mahometans and Hindoos, and is limited to certain classes of rights and privileges. This is not a very probable operation of a charter made for the administration of law to a new population, and where therefore the reasons for such a reservation on the continent of India did not, at least to the same extent, exist.

I confess I am unable to see any words in the charter which can bear out such a result. The passage relied on with respect to the present question is in page 21: "That the said court of judicature shall have and exercise jurisdiction as an ecclesiastical court, so far as the several religions, manners, and customs of the inhabitants will admit." There are, however, similar passages on other subjects in pp. 41, 43, 47, 53; these all differ in the minutiæ of expression, but I think there can be but little doubt that they were all meant to give the same kind of protection. It would be a very dangerous way of construing a document so loose in its expression as the charter to attribute all casual variations of phrase to a definite intention of affixing a different meaning. But in the general impression the charter seems to have intended to give a certain degree of protection and indulgence to the various nations resorting here; not very clearly defined, yet perhaps easily enough applied in particular cases, but not generally, to sanction or recognise their law. In the words of page 43, respecting the criminal proceedings of the court, "due attention is to be had to the several religions, manners, and usages of the native inhabitants;" or as expressed in page 41, process is to be accommodated to such religions, manners, and usages, "so far as the same can consist with the due execution of the law and the attainment of substantial justice." In this last extract "the law" is clearly distinct from those native laws which are to be favoured subordinately to it.

I see no reason to ascribe a different consideration to the words giving ecclesiastical jurisdiction. And it is to be observed that in the detailed provisions respecting such jurisdiction no such words are found; they are only inserted in the general description of the jurisdiction of the court; it might therefore be open to contend that they applied only to other matters of ecclesiastical cognizance not expressly included in the subsequent minute directions. But without insisting on this, which would probably be too strict a construction, I think there is abundantly enough in these provisions of the charter to show that no such recognition of the different laws of different inhabitants could obtain. The court here is to grant probate and administration of the wills and effects of all the inhabitants, and all other persons who shall leave property here; the courts in the presidencies of India have such jurisdiction given them only over the estates of British subjects; and accordingly it has been held at Madras (Chelunnal *v.* Garrow, Sir T. Strange, II. 153, recognised in Syed Ally *v.* Syed Kullee Mulla Khan, Ib. 186,) that no probate

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probate or administration was necessary in the case of native estates, though the court did not refuse to grant it. In the same manner it would not be here; for certainly it is neither Malay nor Hindoo nor Chinese law that a party can have no representative character unless derived from the court of judicature established here under the charter of the King of England, and proceeding according to the law used in the diocese of London. The mere fact, therefore, that administration and probate have always been applied for, seems almost to negative, as far as general usage and understanding is material, the argument advanced.

This observation is important, because Mr. Caunter, on the part of the widow, relies much on the general practice of the court as invalidating the will, and recognising the national law of the testator. No decisions, however, are cited in detail, and much of the practice referred to might be only like that which has obtained before myself, that where the parties contested a matter on the footing of their own law, the court did not interfere to insist on their adopting another. In many cases, too, the laws and usages would be material: the propriety of an administrator's account, for instance, might depend on the religious usages of his nation as to burial; the propriety of his application of property might sometimes depend upon a native law or custom of marriage. And in respect of wills, to one case of which Mr. Caunter adverted rather more particularly than to any other instance, everything, as far as the will is acted on at all, must depend on its construction merely. I should say that the court ought very readily to collect from the expressions of a will that the testator intended his property, so far as not particularly disposed of, to follow the law to which he was accustomed. Thus in a will very recently exhibited before me, I should have no doubt that a direction by a Mahometan, that the property should be distributed "according to the law of God," imported a distribution by the Mahometan law of descent. If such a party disposed of the third part of his property, expressly as that which only he could alienate by will, I should treat it as a clear declaration of his expectation and intention that the rest should follow the course of that law by which, and by which only, his power was so limited. I put plain and easy cases on purpose; but the same principle would very often, in my judgment, have to be applied. But all these would be decisions not on the legality, but on the construction of a particular will; and such, in the absence of minute information, I should believe to be the character of most or all of the testamentary cases referred to.

On the whole, I should entertain little doubt on the question, had I not the authority of Sir Ralph Rice against me. I cannot, however, but think, that though his opinion undoubtedly differed in some degree from mine, it must either be inaccurately reported in the passages referred to by Mr. Caunter, or else must have been given without reference at the time to the provisions of the charter, under which he had ceased to act for nearly seven years. I came to this conclusion, because I find him drawing a marked distinction between the civil and criminal law, for which, even independently of the general principle already adverted to, of putting the same construction on provisions generally similar, I do not find that warrant in the special wording of the charter which he seems to have considered to exist. With respect to the criminal law, Sir R. Rice (Act 1836, p. 174, of the Evidence before the House of Lords, 1830) expresses himself in a manner not much differing from my own, though corresponding perhaps to a rather wider interpretation of the clauses protecting the natives. But he draws a distinction between the criminal law and that affecting civil rights, with respect to which he says, that the court was bound by the clause in the charter to administer the law to every part of our mixed population according to their respective laws and customs. Now, in the detailed provisions as to the prosecution of civil suits, no reference whatever is made to the religious manners or customs of the parties except as to the administration of oaths and the framing of process, where the passage in page 41, already referred to, is to be found. And in the general description of the jurisdistion of the court nothing of the kind is said in the enumeration of the causes at action and parties subject to it; and the words of the clause giving it the same authority as the courts of common law and equity in England are only that these powers are to be exercised "as far as circumstances will admit." The distinction thereof between the civil and criminal law would seem to be rather against than in favour of the more extended adoption of the native laws into the former; and I cannot therefore but think that there must be some error, either in the report of the learned judge's examination, or in his recollection of the words of the charter.

Still

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Still it is evident that his practice must have been in some degree contrary to the opinion I have expressed. Under these circumstances, I cannot but distrust my own judgment; still, as the case, independently of this one authority, seems to me a clear one, I must act on my own impression. The question will probably still be considered doubtful, but I ought not, at all events, to leave it as one where a decided opinion had been expressed, or on one side only, when my own is equally clear on the other.

It may be desirable to call to notice, that it is the fault of native holders of property if any inconvenience results from the present decision, supposing it to be established as law. The law to which I consider them as subject gives the most unlimited freedom of disposal of property by will; and any man therefore who wishes his possessions to devolve according to the Mahometan, Chinese, or other law, has only to make his will to that effect, and the court will be bound to ascertain that law and apply it for him.

The general result is, that the administration granted to the widow must be revoked, the will of Abdullah being established as a valid instrument. Still it does not appear to me to amount to a complete will, constituting Growk the executor of all his property; it is only a disposal of part in his favour, and contains nothing to show that he was intended to have the general management; if not, he is not designated as executor, and he can only obtain administration with the will annexed in the usual manner, by giving notice and filing a proper petition. The present petition may, however, if he wishes it, be amended to that effect, without payment of costs. But it is necessary to observe, that the widow may very probably have a better claim to administration with the will annexed than he, if she wishes to dispute his right. Where the testator constitutes an executor, the court has nothing to do with the selection; the will, if effective at all, is effective in that particular. But where the will appoints none, and administration is therefore necessary, the court has its usual duties to perform, and the parties their usual rights to enforce. The fact that the testamentary paper gives a benefit to a particular individual, may, according to the circumstances of the case, be a strong reason for either selecting him for the administration, or for excluding him from it. But the regular course of petition and notice must be adopted, to give the parties interested an opportunity of coming in and urging their claims.

The prayer therefore of Growk's petition is granted, as far as it respects the revocation of the administration granted to the widow. As far as the grant of any powers to himself is concerned, the petition must be amended. It would be premature to make any order about the costs, while it is yet uncertain who will have the general management of the estate. But I entertain no doubt that the widow will finally be entitled to receive the costs of her present opposition out of the estate. The question must at least be considered as one very fit for discussion; and the estate therefore may properly be charged with the costs incurred, in consequence of the doubtful legality of the course adopted by the testator.

(No. 373.)

To *W. R. Young*, Esq. Commissioner for the Eastern Settlements.

Sir,

General Department.

I AM directed by the Right honourable the Governor-general of India in Council to transmit to you for consideration and such confidential communication to the Governor and Recorder of the Eastern settlements as you may deem expedient, the accompanying copy of a letter from the Honourable Sir B. H. Malkin, Knt., dated the 17th ultimo, and of its enclosure. Sir Benjamin's suggestions for the settlement of the law in respect to real property have been transferred to the Legislative Department, in order that the expediency of promptly remedying some of the evils pointed out may be there taken into consideration.

I have, &c.

Fort William,
9 August 1837.

(signed) *H. T. Prinsep*,
Secretary to Government.

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Ordered,* that a copy of the correspondence with the Hon. Sir Benjamin H. Malkin, Knt. and of the letter his day addressed to the Commissioner for the Eastern settlements, be transmitted to the Legislative Department for further consideration.

(True extract.)

(signed) *H. T. Prinsep,*
Secretary to Government.

Legis. Cons. 11 Sept. 1837. No. 3. Enclosure.

Extract from a Minute by the Right honourable the Governor-general, dated the 9th February 1837, referred to in the 4th Para. of the Letter to Sir *B. H. Malkin,* Knt., dated the 5th July 1837.

The Recorder's Court.

404. In the former part of this Minute, I have mentioned the aggregate amount of saving that would be effected by the abolition of the Recorder's Court, after allowing for the probable expense of an efficient and more economical system to be substituted for it; but I postponed entering into the details in that place, which was appropriated to the consideration of financial matters, because the excessive expense of this court, though it is a great argument with me, is not the chief reason that induces me to recommend its abolition.

405. The last governor of the Straits, Mr. Fullerton, Lord William Bentinck, who visited the Straits, and every public officer who has served there, and who has had an opportunity of delivering an opinion, have agreed in thinking that the Recorder's Court ought to be abolished, as unsuitable to local circumstances, and uselessly expensive. But though I am disposed to concur in the result which all have arrived at, I do not feel the force of all the arguments that have weighed with many of those who object to the court. I am therefore anxious, as this is a question that must be decided by other authority than ours, in reviewing all that has been recorded on this subject, not only to explain the reasons which have actuated my judgment on it, but also to mention those which have not, lest my opinion should be understood to go further than it does.

406. It is necessary carefully to separate two things altogether distinct from one another in discussing this subject, viz. the propriety of having a learned judge from England, specially fixed in them for the administration of justice; for the particular law to be administered, and the particular system by which the law shall be administered, have no necessary connexion with each other. It is quite feasible either to introduce an entirely new law, and still to leave the Recorder's Court as it is now, or to leave the law unchanged, and to provide for its administration without a recorder.

407. When the court in the Straits is without a recorder, the remaining judges are not the less bound to execute the laws of England to the best of their knowledge. Thus Mr. Bonham's argument, though directed against the court, if good at all, can only be good against the law. He gives as a reason why "the law of England, unmodified, and administered as it must be by an English lawyer, (is) inapplicable at these stations," that if the late government had wished to introduce a gambling farm, on a full conviction that it would have a beneficial effect, the court would not have supported it, because, he says, it is bound to abate whatever the British statutes require to be abated, and they require the abatement of gaming-houses. It is clear that, with his views, Mr. Bonham himself, if he were alone on the bench, would be as much bound to refuse to support a gaming farm, under existing law, as any recorder could be; and then, if the law be altered by competent authority, the whole of this argument against a recorder falls to the ground.

22 Dec. 1834, para. 5 (unanswered).

Another argument with Mr. Bonham is, that a professional lawyer is less likely to "see the necessity of modifying the law of England to circumstances." This, too, unless it be taken as an argument against the applicability of English law to

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* Order:—Letter to the Honourable Sir B. H. Malkin, knight, dated 5 July 1837. Letter from ditto, dated 17 July, with its enclosure. Letter to the Commissioner for the Eastern settlements, dated 9 August. Extract from Governor-general's Minute, dated 9 February 1837, paras. 404 to 421, 423 to 427, and 429 to the end.

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to these possessions, does not appear to me to carry weight with it. Perhaps a sound lawyer would feel himself unfettered by rules not applicable to his colony, which an unprofessional man would be very bold to disregard. At any rate, whatever be the law, he who is best skilled in it must, *cæteris paribus*, administer it best everywhere. The late Mr. Fullerton's objections do not seem to be raised so much by the expense of the court, as by other reasons; since one of his propositions of reform* was to have two sets of courts, as in India, one a King's court, for a presidency such as Malacca, within a circle of four miles radius, where he would have a governor and two members of council; and another set of independent provincial courts for the rest of the Malacca province, and for Singapore and Penang.

408. One of his objections was, that the executive government has little else to do than to attend to the police, and that "there seems, therefore, no necessity for separate officers for the two functions, executive and judicial;" in other words, that there is not enough of work to occupy the time of two men, one as a judicial officer, and the other as an executive officer. This seems rather inconsistent with the proposal just alluded to, but I believe it to be nevertheless very true, and if so, it can only be viewed as a strong argument against having a purely judicial officer exclusively attached to these settlements, without any reference to his being an English lawyer or an Indian civilian.

409. Mr. Fullerton's other objection was, that the administration of the executive and judicial functions of government by different individuals causes the one to counteract the other, is unintelligible to the people of these settlements, lessens the authority of the government, and brings it into contempt. His remedy was to introduce a double system of courts, one for Europeans, to whom he would have given an appeal, in certain cases, from the local resident to an exclusively judicial tribunal in the Supreme Court at Calcutta; and the other for all other persons, to whom he would have given a similar appeal to the local governor. It appears that, as far as the courts of the resident and governor were concerned, he did not propose to substitute any particular rules or laws for the English law.

410. I cannot admit the validity of this objection; I do not think the respect in which governments are held by a barbarous, any more than by a civilized people, depends in any degree on the opinion they may have of the personal power of the individual functionaries of government. I think that no people are so blind as not to form their opinions of a government from the general result which they see and feel, rather than from their knowledge of internal arrangements amongst men in power, which, unless they affect that result, are of no importance to any one else. I believe that an independent tribunal for judging civil and criminal causes improves the general result of a government, for reasons which, as they apply solely to the civilized rulers, and not to the uncivilized people, are as strong in respect to these possessions as to Great Britain. And as such a tribunal is as much an integral portion of our administration as any other public authority, if its effect be good, I cannot see how its presence can bring our government into contempt.

411. With these opinions, although I think the details of the present judicial system in the Straits urgently to require alteration, in the reform which I propose the great principle of judicial independence will be kept invariably in view. If the poverty of these possessions, and their distance from one another, make it impossible for them to support the more perfect institutions of large and wealthy communities without inflicting injustice to others, I still think much may be done for them without infringing materially the above great principle, and without giving them establishments disproportionate to their means and wants. My scheme is shortly this, to make the executive officer, whom we must keep up at any rate, employ the time that would otherwise be wasted in original judicial business, and to leave an appeal open to a perfectly independent tribunal, which shall periodically visit each place where the causes of litigation arise.

412. I will first remark upon the court, and afterwards upon the law, now established in the Straits.

413. My great objections to the present Recorder's Court are more nearly the same

* See his Minute of 1st February 1829, enclosed in Acting Governor's letter of 22d December 1834 (unanswered).

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same with those very forcibly urged by Lord W. Bentinck, from whose Minute I have made an extract in the margin,* as distinct from the question of law; they are the extravagant costliness of this court, which I will enter upon in detail presently, and its involving the necessity of conducting the original suits of the people in a language which they do not understand. Now, I can conceive no court of first instance, conducting its business in a language known to the people whose business it conducts, and working under the eye of a civilized government, so bad as not to be better than any court where the contrary is the case. Mr. Bonham mentions the necessity of conveying the evidence to the judge who decides upon it, sometimes through more than one interpreter, each of whom, he affirms, "being conscious that he is not likely to be detected, is apt to interpret somewhat carelessly." In places like these, whatever language may be employed, interpretation would often be necessary; but by having a judge who knows nothing but English, it is rendered always necessary, for even English evidence ought to be interpreted for the public as other evidence for the bench.

Para 5, of 22 Dec. 1834 (unanswered).

414. But the direct inconvenience arising from the necessity of interpretation is far from the greatest objection to the use of any but a well-known language in a court of original jurisdiction. How can we expect the people to feel satisfied at the way in which justice is administered, if they can follow no part of the process, no part of the arguments on either side, and no part of the judgment? And so long as they can know nothing of all this, how can we hope to lead them to take an interest in the judicial business of the country, and to make each man feel that the rights of others hang by the same line as his own, and so create, by very slow but very sure means, some greater feeling of respect for justice and truth, by which alone society is held together? Let us make the law as simple as we may, so long as it is administered without the knowledge of the people, it will appear to them a barbarous juggle. If it were a question between a cheap court that can only use a foreign language and a dear one that can use the vernacular language, I would, I think, prefer the latter; and when both advantages unite, I cannot hesitate.

415. I come, therefore, to the conclusion, that the business of the courts must be conducted in the Malayan language, that being the one most generally understood in these places. All the children of Chinese born in the settlements speak Malay as their mother tongue; and these, with the Malays, form the bulk of the population. All foreign residents, whether English, native Chinese, Chuliahs, Bengalees, or others, find it necessary to acquire this language more or less. It is said to be remarkably easy, and being a written as well as a spoken language, and now generally written in the Arabic character, (being that which is said to be the most readily written, and the most easily read of any,) it has advantages, as a language for courts of justice, which few of the Indian vernacular dialects possess.

416. This great improvement alone would render the assistance of a recorder useless for all original jurisdiction; and I think I can provide for all appellate jurisdiction sufficiently well, and much less expensively, otherwise.

417. I now

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* "What has been said of the unsuitableness of the civil establishment applies with much greater force to the judicial part of the system. In the paper marked (three) will be found the expense of administering justice in the three settlements, amounting to near two lacs and 50,000 rupees, one half of the whole income of the three settlements. If the population had been entirely English, and entitled as such to the benefit of English law, some cheaper mode of administration would be indispensable. But the Europeans, as will be seen by the statement (and of these a few only are of unmixed blood), do not form one-hundredth part of the population, and to subject the ninety-nine-hundredths to a law, the language of which is totally unknown to them, and the provisions of which are probably understood only by the learned judge himself, is an arrangement consistent neither with reason nor justice. The people ought to have the means of becoming acquainted with the code by which their actions are to be judged, and upon which their lives and property depend. Can anything be less adapted to a society always changing and itinerant, and making use of our ports as places of barter rather than of residence, than the slow process of English law, with all its intricacy, its technicalities, and fictions? In the presidencies of India, where the law of England is perhaps equally inapplicable, the understanding of the law may be obtained, at a dear rate indeed, from legal advisers, but such is the poverty of our possessions to the eastward, that no barrister, and only one attorney, has settled in these islands. Surely, under such circumstances, the simplest code, the most summary process, the least formal and the earliest decision; in short, some tribunal like a court of requests, is all that can be necessary. The chief local civil officer, as in our zillahs in India, would amply suffice for this purpose." From Minute of Governor-general, dated 6th June 1829, recorded in Consultation of 23d id.

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417. I now come to speak of the law. Mr. Bonham does not contemplate an entire change of the law; some modification in particular points, where the English law, as it is in England, is inapplicable or injurious, seems to be all that he recommends. This, at least, is my own view of what ought to be done; indeed, those who would entirely abrogate the existing law have not said how they would supply its place. In India we have a foundation of Mahomedan and Hindoo law; we have removed in practice their more material defects, and, with them, our Regulations, as a superstructure merely, do tolerably well for our present wants; but we could not introduce our Regulations by themselves, for though they might make rules of practice they would not make law. We could not introduce the Hindoo law for people not Hindoos; neither should we have any excuse for introducing the Mahomedan law, at least for Penang and Singapore, which are colonized deserts. The Malays are but imperfectly converted Mussulmans, who retain more of their old customs than they have borrowed from their new religion; and, indeed, if we are to take the law of the majority we must introduce Chinese law into Singapore; and if we are to take that of the most important class we must do the same at Penang, and perhaps even at Malacca. We have, as yet, no new code of our own to give these settlements, and much time must necessarily elapse before so great a work can be properly matured. It must take as long to make a complete code for the Straits as for all India, because the variety of the inhabitants is as great there as here, and it is on this circumstance, and not on the number of inhabitants, that the difficulty of original legislation depends.

418. Under these circumstances, and in the present condition of our legislative business, I think we must all agree that it is not immediately desirable that any general abrogation of the existing law of these settlements should be immediately made, either by the Legislative Council or by his Majesty. In inquiring into the partial modifications that it may be advisable to make in the law of England, as applicable to these places, I have not paid much attention to the vague assertions which we have before us of difficulties, delays, and technicalities, assumed to be inseparable from English law; but I am prepared to endeavour to remedy all that has been definitely shown to be bad in the existing system, and to call for practical reports on all points that the local officers may still think to require amendment. I am anxious to lose no time, now that the Council has abundant power for the purpose, in remedying all acknowledged evil, and making all improvements that are immediately practicable, and I should be very sorry if it were thought necessary to postpone all amendment, for I know not how long, because we have it not yet in our power to introduce, universally, a perfect system.

419. Sir B. Malkin * has laid before us some practical suggestions which I think well worthy of consideration. I will here notice the matters on which we may immediately legislate with advantage.

1st. The making the testimony of convicts legally receivable. I can see no objection to such a rule being universal; but in a convict settlement it appears indispensable, otherwise many crimes committed amongst a crowd of convicts must remain unpunishable. No court is likely to give too much weight to a convict's evidence.

2d. The removal of the uncertainty now attaching to the liability of officers and soldiers in actions of debt, and all personal actions wherein the value in question does not exceed 400 sicca rupees, to any other than a military court of requests. The stat. 4 Geo. 4, c. 81, s. 57, takes all such actions in places without the jurisdiction of the court of requests at Calcutta, Madras, and Bombay (in which places they would be cognizable in the court of requests) from out the cognizance of any tribunal other than a military court of requests. As this is evidently an omission, from the framers of that statute not having in mind the fact of the existence of a local court of requests at each station in the Straits, as at Calcutta, Madras, and Bombay, I see no objection to a law enacting that no person whatever, within the territories in question, shall be free from liability to the civil courts therein established in all civil matters, by reason of his rank, calling, or profession.

3d. The

* Letter from Sir B. Malkin, dated 7 July 1835, enclosed in a letter from Governor of Prince of Wales' Island, &c. dated 28 July 1835 (unanswered).

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3d. The giving the magistrates in quarter sessions the power of trying small felonies with a jury. I see no objection to our doing what will be equivalent to this at once. The impropriety of the practice mentioned of jumbling together the preliminary proceedings previous to committal and the trial at sessions, or of omitting the former altogether, is manifest, and the practice ought to be stopped. No prisoners not duly committed on the responsibility of some magistrate ought to be tried at sessions. If the adjournment from time to time have introduced laxity, it is probable that giving the resident councillor the power of summoning the sessions when necessary, at intervals of not less than one month or more than three months, would prevent that evil, without causing too much delay in the trial of prisoners. The defect alluded to by the late recorder, viz. the quarter sessions, as now constituted, being a peculiar session of the Court of Judicature, and the consequent impossibility of the recorder or the other judges inquiring into and reviewing its acts, may I think be obviated by erecting a new court of sessions, instead of altering the jurisdiction of the Court of Judicature sitting in quarter sessions, in the manner authorised by the present charter. I propose therefore to pass an Act empowering the Governor of Bengal to appoint such of the justices of the peace as he may choose chairman and justices of a court of petty sessions, with the necessary powers to summon a jury of five, and to try for such offences as may now be tried at quarter sessions, and also for all such small felonies, of a specified description, that may be sufficiently punished by imprisonment with hard labour for six months. All the orders of the said court to be subject to the review of the Court of Judicature, and the Governor of the Straits having the power to nominate persons temporarily to fill vacancies. The resident councillor appears to be the proper person to be chairman, as he will not commit prisoners as a magistrate, and therefore will not have to try his own commitments.

420. As this plan will render the holding of courts of general and quarter sessions unnecessary, it does not seem requisite to define more accurately their power as to roads, bridges, &c., or to appropriate funds for the carrying of their orders on these subjects into effect, as suggested by the late recorder. Any representation from the magistrates, the grand jury, or any body of respectable inhabitants ought to meet with attention from government, but I do not see anything in the constitution of the bench of justices of the peace, who are appointed by government from amongst the English gentry, that entitles them to spend the money of the whole settlement according to their orders.

4th. To make each settlement a distinct country, with a sheriff at each. The present plan is to have one sheriff (who appears to be paid entirely by fees, for there is no charge in his accounts for his salary *), who has a deputy at each place, receiving *Rs.* 200 a month. This is expensive to suitors, as well as to the State, by causing a necessity of three returns in some cases where one would be enough. I see no objection to enacting a law for this purpose immediately. One officer would be saved, the salaries of the deputy sheriffs being sufficient for the local sheriffs. At the same time legal provision might be made for a local accountant-general being appointed at each settlement, if this should be thought necessary, and the appointment expedient. Under the charter there is one accountant-general, who must be a civil servant, and is, I believe, not paid.

5th. To exempt certain proceedings now required to be under the seal of the court, and to be served or executed by the sheriff, from those formalities. I propose that the governor be directed to report, after consulting with the recorder the other judges, to what processes the desired exemption can properly be extended.

6th. To set at rest doubts as to the authority by whom the sheriff, coroner, and other officers should be appointed, which have arisen in consequence of the charter directing such officers to be appointed by the Governor in Council of the Straits, whilst the real authority of government has been transferred to the Governor of Bengal. I can see no objection to our passing an Act legalizing existing appointments and authorising them in future to be made by the Governor of Bengal, in place of the Governor in Council of Penang, Singapore, and Malacca.

421. The

† There is no account of the value of these fees, but it has been roughly estimated at about *Rs.* 400 a month, by a gentleman for some time attached to the Straits. This has not been included in any of the succeeding calculations.

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421. The other points noticed by Sir B. Malkin must remain till the pleasure of his Majesty be taken on the subject of the court's charter. These are,

1st. the want of an admiralty jurisdiction, which I see was provided for by the Act of Parliament, but omitted in the King's charter; but upon this point a special reference has already been made from the Legislative Department to the Home Government.

2d. The propriety of expunging or altering the provision in page 33 of the charter for the summoning of the recorder by any of the other judges of the Court, before making any order, or doing any act out of Court or in vacation, that may be so made or done by the judges of the Court of King's Bench. Apparently the resident councillors try causes, each at their own settlements, when the recorder is sitting in court elsewhere; and I imagine that they do so either under the clause preceding the above proviso, or in the clause in page 13, or that in page 55, which allows the governor, or a resident councillor with his permission, to summon a special court. This is clearly beneficial, but in such cases the summoning a recorder, who is 600 miles off, is a needless form. Perhaps it may be doubtfull whether the charter intended to authorise the separate trial of causes in different places at the same time by different judges; for if it had, this proviso could hardly have been inserted; but if it did not, it was a great omission. Should the Recorder's Court remain, the power ought to be distinctly given, and no proviso inconsistent with the circumstances of the three settlements ou ght to be inserted. The clause in page 55 of the charter apparently empowers each resident councillor to summon a special court when he pleases, but in that case there is no provision requiring the recorder to be summoned.

3d. The altering the constitution of the court in consequence of the abolition of the government, whose members are the lay judges. As far as this should alter the titles of governor and resident councillor, and allow those officers to be called by designations more suitable to their real duties, this would be unobjectionable. But I would not recommend the taking away of judicial powers under the charter from the chief local authorities, without giving them some other judicial powers instead; for each settlement ought to have a stationary tribunal for small matters.

4th. The propriety of removing the exemption to the judges of the court from indictments for misdemeanors.

5th. The propriety of abolishing grand juries and making grand jurymen serve on the petit juries; also of authorizing the court to frame rules regarding the jury list and jurymen. If the charter be surrendered and no new one be granted, the above suggestions will no longer be applicable. The suggestions also for immediate legislation, which have been before stated, are offered only for consideration, and I would solicit in respect to them the sentiments of the Council.

423. Before we can make any more important changes in the law for these settlements, we must have full and distinct reports of the points wherein it is now felt to be inapplicable to their condition. In looking over the charter, I see no manifestation of his Majesty's pleasure having been to enforce the operation of more of the English law than is suitable to the circumstances of these colonies; on the contrary, I see an anxious wish to adapt the law to the place. As a court of oyer and terminer, the judges are required "to administer criminal justice in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as our courts of oyer and terminer in England." And as a civil court, though the powers of our common law, equity, and ecclesiastical courts are given them, they are not required to exercise them "in the manner and form" adopted in those courts. One simple uniform course of procedure is laid down for causes of every description. Any person may complain verbally, or in writing, to any of the judges or the registrar, on which it is the duty of the recorder or the registrar to reduce the substance of the plaint into the form of a written petition, divested of extraneous matter, the prayer of which shall be so framed "that justice shall be done as the case shall require." This is to be explained to the person or persons complained of, and their answer treated in the same way, and "no matters of mere form" are to be admitted as pleas. Defendants may be compelled in all cases to make answer or discovery on oath, as in equity in England. Litigants are allowed to amend or withdraw the above plaints, answers, &c., as "substantial justice" may seem to the court to require. After

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examining the allegations of the parties and the evidence adduced by them, for which reasonable days shall be assigned, the court is "to give and pass judgment and sentence according to justice and right." As to the law to be followed, there is not a word said about it; but surely these last words intend that the most liberal construction possible shall be given to that principle of the law of England which in colonies under English law invalidates all laws incompatible with the actual circumstances of such colonies. Mr. Bonham anticipates little improvement in criminal justice by abolishing the court as now constituted, but much improvement in civil justice. Now if it be true, as is said, that the procedure of this court is expensive, dilatory, complicated, and incomprehensible to the natives, more than a court conducted in an unknown language must always be, it seems to me that the reason of this is not to be found in any necessity arising out of the specific provisions, or the general spirit of the charter. If I were to constitute a new court, I do not know how I could simplify the process more, or fit it better for an ignorant population, in a place where independent professional advice is not obtainable. The imposing it as a duty on the court to prepare the case of the parties, and even to receive and record methodically their verbal addresses, is a recurrence to a primitive simplicity of process in a court of English law of which we have yet no instance in an Indian court.

424. As to procedure, it may be right to call the attention of the court to these considerations, and to suggest to the judges that they should make every practicable improvement in their forms of process consistent with the obvious intention of their charter. And as to law, I propose to call on the local authorities, after communicating with the court, and all persons who may be likely to give useful information, to report all real wants or subjects of complaint, and to point out remedies for them.

425. From some observations of Sir R. Rice, a former recorder, reported in Mr. Phillips' Minute, it seems that it has not been yet judicially decided how the real property of Asiatics descends, whether to the eldest son or heir, or to the next of kin, or to the heirs by the law and religion of the deceased. It seems that administrations have been granted as if the English law did not apply, but that it is very doubtful whether that arrangement could be maintained if contested. I think this subject ought to be inquired into, and it ought to be ascertained whether making both the real and personal property of Malays, Hindoos, Chinese, and Parsees inheritable according to their own laws respectively, would be considered a benefit by those classes, or whether one rule applicable to all might not be adopted, even though that rule should not be consonant with the English law.

See Appendix, No. 22.

426. On this subject I beg to refer to a copy of a letter from the Honourable Sir B. Malkin to the Right honourable C. Grant, without date, which has been obligingly furnished me. In the latter part of this letter mention is made of the peculiar rapidity with which landed property in these places deteriorates, if left to itself, whilst executors, though generally on the spot when the owner dies, have no legal authority to go to any expense for its preservation, and the heir is often too far away to take the necessary measures in time. This is an inconvenience arising from local peculiarities which I think ought to be immediately obviated by legal enactment.

Governor of Prince of Wales' Island, &c. 3 Oct. 1836, with enclosures (unanswered).

427. I notice in the margin a representation from the Agricultural and Horticultural Society of Singapore, complaining of depredations being committed in plantations with impunity under the existing law, owing to Mr. Wynn's Act having repealed former Acts under which such delinquencies were punishable, without providing anew any penalties for them. As this can only have been an accidental omission in Mr. Wynn's Act, there seems no objection to taking the advocate-general's opinion on the state of the law, and immediately remedying the omissions, if necessary, by an Act of the Legislative Council. Captain Low has submitted a proposed draft of an Act for the same purpose, which, however, is not altogether approved of by Mr. Murchison.

Governor of Prince of Wales' Island, &c. 5 Nov. 1836, with enclosures (unanswered).

429. I now proceed to detail the expenses of the Recorder's Court:

No. 2.
Abolishing the Recorder's Court in the Straits.

	Per Mensem. Rs. a. p.	Per Annum. Rs. a. p.	Rs. a. p.
General Charges:			
Recorder's salary - -	3,367 15 -	40,415 10 -	
Clerk to ditto, at - -	300 - - (A)	—	
2 soutaburdars, at - -	24 - -	—	
1 jemadar, at - - -	22 - -	—	
2 peons, at - - -	20 - -	—	
	336 - -	4,589 13 -	
			45,005 - -
Register's salary - -	1,463 1 - -	- - -	17,506 - - (B)
Sheriff (no salary).			
Accountant-general (ditto).			
1 clerk to ditto - - -	20 - -	- - -	240 - - (C)
Contingencies, average of three years - - -	- - - -	- - -	1,072 - -
Passages of recorder and register on circuit, average of three years - -	- - - -	9,856 4 -	—
Ditto of clerk, &c. - -	- - - -	1,845 12 -	—
Batta of clerks, &c. on circuit	- - - -	1,326 14 -	—
Contingencies on ditto -	- - - -	76 5 -	—
			13,105 - - *
	TOTAL General Charges - - - - *Rs.*		76,978 - -
Local Charges:			
1 head clerk to register -	522 8 - (B)	—	
1 clerk - - - - -	209 - -	—	
1 chief interpreter - -	150 - -	—	
1 second ditto - - -	20 - -	—	
1 swearer - - - -	50 - - (D)	—	
2 writers, at 20/. - -	40 - -	—	
2 swearers - - - -	24 - -	—	
3 peons - - - - -	30 - -	—	
	1,045 8 -	12,546 - -	—
1 deputy sheriff - - -	209 - -	—	
1 coroner - - - -	104 8 - (E)	—	
1 peon to ditto - - - -	10 7 2	—	
	323 15 2	3,887 - -	—
At Penang:			
1 head clerk to register -	522 8 - (B^2)	—	
1 clerk - - - - -	313 8 2½ (F)	—	
1 ditto - - - - -	104 8½ - (G)	—	
2 interpreters - - -	200 - -	—	
2 ditto and writers - -	80 - -	—	
2 swearers - - - -	16 - -	—	
1 crier - - - -	50 - - (H)	—	
1 shroff - - - -	20 - - (I)	—	
3 peons - - - -	30 - -	—	
	1,336 8 9	16,038 - -	—
1 deputy sheriff - - -	209 - -	—	
1 coroner - - - -	104 8 - (J)	—	
1 peon to ditto - - -	10 7 2	—	
	323 15 2	3,887 - -	—
At Malacca:			
1 head clerk to register -	522 8 - (B^3)	—	
1 head interpreter - -	100 - -	—	
1 interpreter - - -	20 - -	—	

(*continued*)

* This does not show the proper charge on this account, for one circuit of Sir B. Malkin was performed in the H. C. S. Clive, and last year the recorder only made one circuit; but two circuits are indispensable for the proper conduct of the judicial business, civil and criminal. The true average cost is about *S. Rs.* 12,000 for each circuit.

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	Per Mensem.	Per Annum.	
At Malacca—*continued.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*
1 writer and swearer - -	50 – –	—	
1 third swearer - - -	10 – –	—	
1 shroff - - - - -	20 – – (K)	—	
2 peons - - - - -	20 – –	—	
	742 8 –	8,910 – –	—
1 deputy sheriff - - -	104 8 –	—	
1 peon, to assist recorder as coroner - - - - -	10 – –	—	
	114 8 –	1,374 – –	—
TOTAL Local Charges - - - - - *Rs.*			46,642 – –
GRAND TOTAL - - - - - *Rs.*			1,23,620 – –

430. This charge is exclusive of the charge for court-houses, subsistence of prisoners, &c., which would be nearly the same whatever tribunal were substituted for the Recorder's Court. The whole of it is specially incurred by reason of the peculiar form of this court, and it cannot be materially diminished until the court be abolished. The reduction of this sum, therefore, depends mainly on the authorities at home.

431. To the above amount the following sums must be added, to show the entire cost of the Court of Judicature at present:

	Rs. a. p.
One moiety of the present salary of the governor - -	18,000 – –
Ditto - - ditto - - resident councillor of Singapore	15,000 – –
Ditto - - ditto - - - - ditto - - - Penang -	12,000 – –
Ditto - - ditto - - - - ditto - - - Malacca -	12,000 – –
TOTAL of Moiety of Salaries of Lay Judges - -	57,000 – –

Making the whole amount of the cost of this court *Rs.* 1,80,620.

We have it in our power to reduce this last charge of *Rs.* 57,000 to *Rs.* 39,000. Besides the above, there are the following judicial charges incurred in these settlements:

	Rs. a. p.	*Rs. a. p.*
Moiety of Salaries of—		
1 assistant resident, Singapore - - -	5,000 – –	
1 - - ditto - - Penang - -	5,000 – –	
Second ditto - - ditto - - -	4,831 – –	
1 - - ditto - - Malacca - - -	6,480 – –	
TOTAL - -		21,311 – –

N. B. The above officers, with other duties, are also magistrates and commissioners of courts of requests.

Establishment of Police and Courts of Request—		
At Singapore - - - - -	11,232 – –	
At Penang - - - - - -	20,112 – –	
At Malacca - - - - - -	7,020 – –	
		38,364 – –
Judicial Contingent Charges (average of three years):		
At Singapore - - - - -	9,904 6 –	
At Penang - - - - - -	7,853 9 –	
At Malacca - - - - - -	3,536 6 –	
		21,294 – –

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	Rs. a. p.	Rs. a. p.
1 gaoler, 1 turnkey, 1 bailiff, and 2 peons at Singapore	1,880 – –	
Additional gaoler, and establishment for lunatic prisoners at ditto	600 – –	
1 gaoler, &c. at Penang	2,360 – –	
Ditto - ditto - Malacca	1,881 – –	
	6,721 – –	
Rent of court-house at Singapore	4,041 – –*	10,762 – –
	Rs.	91,731 – –

432. The above charges, which do not include the cost of police, maintained out of the house assessment fund, of which we have no information, are incurred in the Judicial Department, independently of the Recorder's Court, and we have it in our power to reduce them. The total judicial charges of these settlements thus appear to be—

	Rs. a. p.	Rs. a. p.
Charge of Recorder's Court, necessarily dependent on the present form of that court	1,23,620 – –	
Charge of ditto on account of its lay Judges	57,000 – –	
Total of Court of Judicature		1,80,620 – –
All other judicial charges, exclusive of police		91,731 – –
TOTAL Judicial Charges	Rs.	2,72,351 – –

433. This sum is more than one-half of the whole annual revenue of these possessions,† and the greater proportion of it, viz. *Co.'s Rs.* 1,80,620, is incurred on account of one court of judicature. A great part of it, viz. *Co.'s Rs.* 1,23,620, or nearly half the whole judicial charge, is incurred merely because that court is made a recorder's court, on the model of an English court of law. The value of the matter disputed in the court in the year 1832–33, and 1833–34, averaged yearly no more than *Co.'s Rs.* 5,86,711,‡ and this includes an arrear of two years for which the court had been closed; so that one-half of this sum, viz. *Co.'s Rs.* 2,93,355, was the true yearly value of the property litigated at the three settlements for the four years from 1830–31 to 1833–34, being but a little more than the regular annual judicial charges, and but about three-fifths more than the yearly cost of the court in which the property was litigated.

434. The salaries paid to most of the officers of court are paid under an arrangement entered into between the court and the government, whereby the latter take the fees of court, and pay the officers fixed salaries for so long as the latter continue to receive the fees. It may be said that the expense of the court is unfairly stated, because the fees, which amounted in 1834–35 to *Co.'s Rs.* 45,415, are received by government per contra; but the fees are already included in the gross revenue as I state it, and I cannot therefore admit this. See Appendix, No. 24.

435. This charge of *Rs.* 1,80,620 is so enormous for the court of judicature of a population of no more than 184,912 souls, of whom there are not 500 Europeans out of the Company's service, that it would, in my opinion, be an improper waste of the public money, if the people themselves could pay for it; but when I observe that the people cannot pay for it, and that the people of India, whose judicial establishments are much below what they require, are forced to maintain such a tribunal for settlements so inconsiderable, I feel that I should not be doing my duty if I were not to bring the subject to the notice of those who alone can remedy the evil, with my strongest recommendation that the Recorder's Court be altogether abolished, and the charter surrendered to the Crown.

436. All

* At Penang the court-house belongs to government, and, with the recorder's chambers, is valued at *S. Rs.* 37,000. The total value of judicial buildings at Penang is, *S. Rs.* 1,26,826; at Malacca the court is held in the stadt-house, which, with its out offices, is valued at *S. Rs.* 44,610.

† Revenue in 1834/35, *Co.'s Rs.* 5,23,266.

‡ Or an aggregate of *Sp. Drs.* 5,21,52[illegible]. *See* Acting Governor's letter of 22d December 1834. (Unanswered.)

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436. All that we can of ourselves do is not much, compared with the magnitude of the evil. By the reduction of *Rs.* 36,000 that I propose to make in the salaries of the four civil servants who are the lay judges, the item marked (L) will be lessened by one moiety of those reductions, viz. by *Rs.* 18,000 from *Rs.* 57,000; therefore that item will be reduced to *Rs.* 39,000; and it might require very little more than this to provide amply for the judicial business of these places according to a scheme to which I shall immediately advert.

437. So long as the recorder is kept up, the only remaining reductions that appear to me practicable are shown in the Appendix, No. 23.

438. They amount in all to *Rs.* 27,450, a small sum compared with the expense of the court, but well worth saving when we remember that it is enough to make up for two-thirds of the pawn farm proposed to be abolished.

439. Deducting this from *Rs.* 1,23,620, there will be left *Rs.* 96,170 as the sum that will remain solely debitable to the recordership, after every possible reduction consequent. Allowing for this prospective reduction, and the reduction from the salaries of the lay judges, (a part of which will be immediate) the least possible ultimate cost of the court will be *Rs.* 1,35,170, a sum more than equal to one-fourth of the revenue, not for the judicial expenses of these possessions, but for one court of judicature in them.

	Rs.
Recorder, &c. -	96,170
Lay judges -	39,000
Rs.	1,35,170

440. A scheme has been submitted to me for consideration, which might be explained to the Honourable Court as one that might possibly with advantage be substituted for the present inefficient and costly system. The main feature of this scheme, namely, the sending of an Indian king's judge in circuit to the Straits, is one that appears in a proposition of Mr. Bonham's.

See para. 11 of Acting Governor's letter of 22d Dec. 1834.

441. To have one paid magistrate and an assistant magistrate at each settlement, who shall also have charge of their revenues; both to be justices of the peace, and both to have consequently the power of commitment, but the assistant to be generally under the orders of the magistrate, who should have power to review the assistant's orders. To empower them both to punish for slight misdemeanors, petty thefts, &c., and to empower the magistrate to try small felonies by a jury of five, and to sentence persons thereby convicted to one year's imprisonment with hard labour. To make all the orders of the magistrate and his assistant appealable to the resident of the three settlements, who should be able to remit sentences, but not to interfere with verdicts.

442. To direct the Governor of Bengal to make natives, or others, justices of the peace in the interior, where necessary.

443. To make the magistrate and his assistant commissioners of a court of requests, to sit one at a time, as may be convenient, and to increase largely the jurisdiction of the court of requests, which now does not go beyond debts to the amount of 32 dollars.

444. To have one resident for the three settlements, who, besides hearing appeals from the magistrate, shall be a civil and criminal judge, holding his court at each settlement alternately, with power to summon juries, to try appeals from the court of requests, and to all original civil cases, with or without a jury of five, according to the desire of the parties, giving either party a right to require a jury; and with power to try all criminal cases, with a jury of five, excepting only in cases wherein a British-born subject shall be accused of a crime, for which, if found guilty, he would be liable to suffer death. To empower the resident, as judge, to postpone or adjourn the trial of any case, civil or criminal, for the arrival of his Majesty's judge on circuit.

445. To empower the resident, as judge, to pass judgment in civil cases, and, if not appealed from, at his discretion either to execute it, or to grant a new trial; and either to postpone sentence in criminal cases, for the arrival of his Majesty's judge, or to pass it according to law, and to authorize or postpone execution thereof at his discretion, excepting only in capital cases, in which judgment shall not be executed until a report of the trial shall have been submitted to his Majesty's judge on circuit, or to one of the judges of his Majesty's court in Calcutta, and the sentence approved and confirmed by him.

446. To obtain the gracious pleasure of his Majesty to the proceeding of one of his Majesty's judges of the Supreme Court in Calcutta to the settlements in the Straits once a year, or oftener if need be, for the trial, with or without a jury, of all original cases, civil or criminal, that may be referred to him; for the trial of all appeals, civil and criminal, from the decision of the commissioner; and

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for the hearing and passing orders on all petitions. To empower him to call for any proceedings of any local judicial officers, with any statements or explanations he may require, and generally to vest him with the powers of the Court of King's Bench and the Court of Chancery, together with all necessary ecclesiastical and admiralty powers within the settlements. It would apparently be necessary, in order to the exercise, in the first instance, of the powers of an Admiralty Court always on the spot, to solicit that the resident's court be invested with admiralty jurisdiction by his Majesty, if such should be his royal pleasure.

447. It may be convenient to authorize the sending on this circuit of a judge from Madras, if it should ever be found inconvenient for one to quit the bench at Calcutta; but as it is always much easier to go and return from and to Calcutta than from and to Madras, and as it would be better, if possible, to have the revision of the courts in the Straits made by one court than by two independent courts, it would be preferable that generally a judge should go from hence, whereby any general superintendence that occasion might require might, with the greater propriety, remain with the court at Calcutta.

448. The law by which all matters are to be decided, to remain of course as the law now stands, excepting where altered in the meanwhile by Act of Parliament, or Act of the Council of India.

449. This scheme might perhaps answer every good purpose of the present system, and be free from its disadvantages. The only reason for having an English professional judge amongst this population of Malays and Chinese, was on account of the few English merchants who reside amongst them. There are about four or five mercantile firms and merchants trading on their own account at Singapore, and perhaps 20 agents for houses in London, Liverpool, and Glasgow. At Penang there are scarcely any, and at Malacca I believe none at all. Now, it seems extravagant to keep up an expensive court on the spot merely for the sake of these few individuals; and it is certainly unjust to impose a peculiar and expensive tribunal on some 180,000 Asiatics for their sake.

450. By the scheme to which I have alluded, or any other affording the same advantages of economy which, in the judgment of the authorities at home, may be deemed preferable, I would seek to give to the body of the people a vernacular court, whilst the small European community will still have its most important cases tried by a professional judge, and an appeal on points of law in all cases to a professional judge; and a great general improvement of this kind could well be effected, with a saving to the community equal to more than one-fifth of the taxes which they now pay.

451. I do not believe that there would be in an arrangement of this nature a disadvantage, to any class, to set off against the great general advantage. The apparent disadvantages are, to the English, the following:

1st. The having a professional judge with them only once a year. But how stands the case truly? The judge is most wanted by the English at Singapore, where they are most numerous; but he has always resided at Penang, making circuits only to Singapore. Last year there was but one circuit made, and though the recorder staid a long time at Singapore, that was an accident. More than two circuits in a year never, I believe, have been made. Mr. Bonham shows that, from October 1824 to February 1833, a period of eight years and four months, the settlements have had the benefit of a recorder's presence for only two years. During four years and six months of that time, the court was open without a recorder, and the lay judges performed the whole judicial business, without the assistance in any way of a professional judge, or any appeal to one. During the remainder of the above period, namely, one year and ten months, the court was shut altogether, under what appears to have been a misconception of the effect of the abolition of the late government; but had no such misconception occurred, the lay judges would have done the whole business for these 22 months also, for there was no recorder present. Thus the certain presence of a professional judge once a year will really be more than any one settlement has had under the present system. If a power of reference to Calcutta on special cases be given, upon the consent of both parties, to which I can see no objection, still greater facilities to the dispatch of business will exist.

452. Another apparent objection is, that the Calcutta judge will be a stranger to the Straits. But, in the first place, this will not matter much, as he will have little original matter to try, excepting in special English cases; and in the next place, he will be little more of a stranger than the recorder has hitherto been:

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for in the last 12 years there have been five different recorders, none of whom have remained longer than two years in the Straits, and none of whom, I presume, have professed a knowledge of the language.

453. The following may be taken as an estimate of the expenses of salaries, establishment, passage-money, and contingencies, which would be incurred under the scheme alluded to, instead of those now incurred on account of the present court.

	Rs.	*a.*	*p.*	Per Annum. *Rs.*	*a.*	*p.*
Moiety of salary of governor as judge	-	-	-	15,000	–	–
One head English clerk of civil and criminal court, at 400/	4,800	–	–			
One junior clerk* of ditto, ditto	2,400	–	–			
One head Malay clerk to ditto, ditto, at 100/	1,200	–	–			
One 2d ditto, ditto, at 60/	720	–	–			
Two ditto, ditto, at 80/	960	–	–			
Two interpreters,† at 150/	1,800	–	–			
Three swearers, at 36/	432	–	–			
Peons and servants, 50/	600	–	–			
				12,912	–	–
Contingencies, average as at present	-	-	-	1,072	–	–
Circuit ditto - ditto - ditto	-	-	-	76	–	–
Passage of his Majesty's judge and his clerk once a year to and from the Straits, say	5,000	–	–‡			
Providing accommodation for his Majesty's judge at Penang,§ table during the circuit, and all other charges, say	3,000	–	–			
Extra allowance to clerk for circuit, say	1,500	–	–			
Batta to servants, say	500	–	–			
TOTAL Cost of Circuit of his Majesty's Judges				10,000	–	–
Extra charge of four circuits of establishment on governor's circuits				2,000	–	–
Add, for incidental expenses not calculated for				3,940	–	–
			Rs.	45,000	–	–

454. By deducting this from the actual cost of the recorder's court now,* we have a saving of *Rs.* 1,35,620 per annum to the Judicial Department, whereof *Rs.* 93,620 is a real item, solely attributable to the abolition of the court, and *Rs.* 42,000 is in this view only a nominal item, because the salaries of the lay judges are drawn independently of this court.

See para. 432.	*Rs.*	*Rs.*
*Actual cost now (A.)	1,80,620	
By proposed plan (B.)	45,000	
Nominal saving		1,35,620
Deduct amount of salaries of lay judges included in (A.) = 57,000 — 1,500, which has already been deducted as a part of (B.)		42,000
Real saving		*Rs.* 93,620

455. If, upon the going off of all present incumbents, we should ever be able to carry into effect all the reductions in the establishment of the court contemplated in paras. 437 and 438, out of this real saving of *Rs.* 93,620 a sum of *Rs.* 27,450 may be saved at some future indefinite time, without the abolition of the court. But this is at best doubtful, for it supposes not only that all those reductions are in themselves proper, but that they will be submitted to by the recorders of future times, without such a degree of opposition as would make it more expedient to abandon than to enforce them. And even if effected, it cannot be fairly treated as a gain to the general revenue; for wherever the establishment can be reduced below the aggregate amount of fees, the pretext by which the surplus fees are taken

* The clerks must understand the Malay language, so as to translate papers for the King's judge, either in writing or *vivâ voce*, and act as Malay interpreters before him. The head clerk must also be the accountant of the court.

† For Chinese, and for Telinga and Hindoostanee.

‡ Mr. Bonham estimates this at *Rs.* 10,000 or *Rs.* 12,000; but with a steamer to take the judge about, in the Straits, it is impossible that the passage to and fro can properly come up to this sum. Probably Mr. B. meant to include all charges in consequence of the circuit.

§ At Singapore there is excellent accommodation over the court-house, which is not wanted for the governor, as that being his chief residence his own home will be there. At Malacca there is also accommodation in the stadt-house, now given to the recorder on circuit.

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taken will be at an end, and therefore that surplus ought no longer to be exacted from litigants.

456. In conclusion, I must repeat, that to feel the value of this proposed saving as an economical measure, we ought to compare the above sum of *Rs.* 93,620 with the population who will be relieved by it, which consists of only 184,912 souls, and with the revenue they now pay us, which is (inclusive of *Co.'s Rs.* 45,415 from judicial fees) no more than *Co.'s Rs.* 5,23,266 per annum.

(True extract.)

(signed) *H. T. Prinsep,*
Secretary to Government.

9 February 1837.

(No. 158.)

Legis. Cons. 22 Jan. 1838. No. 3.

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the General Department, under date the 18th October 1837.

READ a letter from the Honourable Sir Benjamin Malkin, knight, dated the 16th September last, submitting observations and suggestions on the subject of the Recorder's Court in the Eastern settlements, which were left unnoticed in his letter of the 17th July last.

Read a Minute by the Honourable Henry Shakespear, dated the 27th September, on the above.

Read a Minute by the Governor-general, dated 16th instant, on ditto.

Ordered, that the above-mentioned papers be sent in original, in continuation of Extract No. 112, dated the 9th August last, to the Legislative Department, in which department the question what courts of justice should be provided for the Eastern settlements is under consideration, and from which a reference was made to the Honourable Court of Directors on that subject.

The lamented illness and decease of Sir Benjamin Malkin prevents the government from making to him the acknowledgments due for his valuable suggestions and ready aid in the discussion of this important subject.

Ordered that the original papers now sent be returned to this department when no longer required.

(True extract.)

(signed) *H. T. Prinsep,*
Secretary to the Government.

Legis. Cons. 22 Jan. 1838. No. 4. Enclosure.

From the Hon. Sir *B. H. Malkin*, Knt. Puisne Judge, Fort William, to *H. T. Prinsep*, Esq. Secretary to Government, in the General Department.

Sir,

I HAVE now the honour of forwarding to you the observations which have occurred to me in reference to those parts of the Governor-general's Minute of the 9th February 1837 which I left unnoticed in my letter of the 17th July last. My principal object will be to lay before his Lordship in Council a statement of some facts on which he appears to me to have received inaccurate or no information, and of some considerations which could not arise till those facts were fully known, rather than to express much of opinion as to the expediency of the changes contemplated.

2. In doing this I shall probably appear more the advocate of the existing system than I should wish. This is unavoidable, for the necessity of my entering into the explanations which I am about to give arises from the circumstance that, as far as I can judge, only one side of the question has at present been stated. It falls upon me, therefore, to state the other, and to state little else, for I am not aware that any of the considerations unfavourable to the continuance of the court have failed to be presented to the Governor-general, or require any further elucidation or enforcement.

3. It is undoubtedly one strong argument against the continuance of the court in its present footing, that persons whose situations give them excellent opportunities of judging, should form so unfavourable an opinion of it as they appear to have

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have expressed. I do not, however, collect from his Lordship's Minute that this opinion, with one very material exception, is derived from more than one class—the officers of government in the Straits. His Lordship's words are, that "the last governor of the Straits, Mr. Fullerton, Lord William Bentinck, who visited the Straits, and every public officer who has served there, and who has had an opportunity of delivering an opinion, have agreed in thinking that the Recorder's Court ought to be abolished, as unsuitable to local circumstances and needlessly expensive." There does not appear to be any expression of the sentiments either of the officers of the court unconnected with the government, or of the merchants or other inhabitants of the place for whose benefit and protection the court is chiefly established. As far, therefore, as the force of opinion goes, with the exception of that of Lord William Bentinck, of which I would always speak with the highest respect, though I do not conceive that his very short and hurried visit to the Straits could have at all added to his other means of appreciating this subject, the unfavourable judgment expressed is confined to one class, and that the class most likely to be jealous of all interference, and hostile to any co-ordinate authority. That Mr. Fullerton was so is well known, and indeed sufficiently appears from the statement of his opinions in the 409th para. of the Governor-general's Minute, and it is equally notorious that his hostility was quickened and excited by continual disagreement between him and the only recorder who was in office during the period of his government. Who the other officers are, with the exception of Mr. Bonham, who have expressed the sentiments referred to, I am not aware; if, however, I am right in thinking that there are very serious considerations in favour of the present constitution of the court which have entirely escaped their notice, it is not very unreasonable to suppose that this blindness must have resulted from something of dislike to its institution, a dislike, I am happy to say from my own experience, perfectly compatible with goodwill to the individual functionaries engaged in it.

4. Perhaps, however, I have dwelt too long on an argument from authority, to which, though prominently stated at the head of the Governor-general's observations on the subject, his Lordship does not seem to attach very great importance, or to attribute any great weight of reasoning to most of the papers in which the opinions referred to have been expressed; I pass therefore to the most material points for consideration, the alleged inefficiency of the present system, and the probability that the changes contemplated would produce improvement. I postpone for the present the mere question of expense, as of subordinate, though very considerable importance.

5. In my observations on this subject I shall only consider the existing and proposed systems, as applicable to the administration of the present law of the settlements, with any such temporary or particular modifications as are referred to in the 417th paragraph of the Governor-general's Minute. No other changes appear to be contemplated as of immediate probability; and it will be soon enough to consider how the administration of a completely new system can be best provided for when the nature of the system is ascertained. If it should differ much from the present, the best mode of administering it will probably differ also from the best mode of carrying that which now exists into effect; a consideration which perhaps furnishes some ground for doubting how far it is expedient to interpose another fundamental change in the construction and operation of the court; for doubting it, at least, unless the present evil is really as great as it is represented to be.

6. The evil, however, is undoubtedly stated to be urgent. Mr. Bonham, it is said, in paragraph 423, "anticipates little improvement in criminal justice by abolishing the court, as now constituted, but much improvement in civil justice;" and the procedure of the court is stated to have been represented as "expensive, dilatory, complicated, and incomprehensible to the natives, more than a court conducted in an unknown language must always be."

7. These are statements which, if fully substantiated, certainly show much need of change. I had entertained an intention of asking for a fuller communication of the papers in which these views have been expressed, but I have abandoned it. I do not, indeed, know exactly how far the details of the plan explained in the latter part of the Governor-general's Minute correspond with Mr. Bonham's suggestions, but his scheme obviously involves the abolition at least of all original investigation in civil cases by a professional judge, and makes the alleged improvement in civil justice to consist not merely in a simpler procedure. His

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great objection appears from passages stated in paragraph 407, to be the manner in which the law must be administered by an English lawyer.

If I am right in this understanding of his views, I have no occasion to inquire more minutely into them; and with respect to other representations, especially any which have been made as to the procedure of the court, as my own impressions of what has actually been the case differ very materially from those which appear to have been communicated, I had rather make my own statement of facts within my knowledge, than enter into any particular consideration of other accounts, and run any risk of conflicting assertions on mere matters of detail.

8. The alleged improvement in the administration of civil justice may arise in two ways: a better decision of questions of law, a better determination of matters of fact. With respect to the former, I need say nothing after the observation already made by the Governor-general in the 407th paragraph. His Lordship is fully aware that the more relaxed interpretation of the law, which Mr. Bonham appears to consider desirable, would very generally be an interpretation against law, and that an English lawyer, unless he be a merely pedantic one, is no more disqualified than any other functionary to administer the law of England, with a due accommodation to circumstances.

9. With respect to the better determination of facts, little except mere vague opinion can be obtained. Whether Mr. Bonham may prefer the unsophisticated judgment of a non-professional man, or whether I may think most favourably of the more educated opinion of a lawyer, is of little importance. There is no such public in the Straits, none at least that watches the proceedings of the courts, as to render other opinions of much value; and Mr. Bonham's and my own, or that of any other recorder, merely amount to this, that where their conclusions do not agree, each prefers his own; I may say this without any disparagement of Mr. Bonham's services in the ascertainment of facts. I had occasion sometimes to reconsider cases previously investigated by him, and to the best of my recollection, our opinions on facts very seldom differed on the same evidence, though I think I remember instances of determinations altered on fuller investigation.

10. I ought, perhaps, to apologise for treating Mr. Bonham so completely as the principal informant on these subjects. No other name, however, occurs in the Governor-general's Minute, and no other officer now in the Straits has taken nearly so active a part in the administration of justice, or consequently possessed nearly equal means of forming an opinion; I am not aware, indeed, that any others have acted at all, except Mr. Garling, at Malacca, where the whole amount of judicial business is very trivial, and Mr. Wingrove occasionally at Singapore, during the absence of Mr. Bonham, and while he was himself officiating as resident councillor, too short a period to give his opinion, if it has been expressed, the weight to which in most cases it would be eminently entitled; I do not feel, therefore, that I underrate the importance of the representations made, when I attribute them principally to Mr. Bonham. Yet there are considerations which might, I think, have made Mr. Bonham doubt the judgment he has expressed. He does not contend that the administration of criminal justice would be improved by the change he recommends. Of this he has full means of judging, for the lay judges of the court generally, and Mr. Bonham in particular, used to take their seat in the court with the recorder during a very large portion of the criminal sessions. But I am not aware that he ever (I speak of course merely of my own time) was present during any of the civil proceedings held before the recorder, with the exception of a few occasions immediately after my arrival in the Straits, when, as a stranger, I requested his assistance; and once for the purpose of expressing his opinion on a question as to the relative functions of the judges, on which he and Mr. Ibbeston, the then governor, differed for a time, but finally concurred with me. He may have been oftener present than I recollect, but in this I cannot be mistaken, that it was his habit to attend at the criminal proceedings of which he approves, and not at the civil proceedings which he censures.

11. With respect again to the statements made as to the procedure of the court, I need only refer to the 423d para. of the Governor-general's Minute, to show that the fault, if it exists, arises not from the provisions of the charter, but from the manner in which the charter has been administered by the judges. How this has been done by others than myself, whether they be lay or professional judges, I cannot say; but my own recollection of the practice of the court, in a very large proportion of the cases brought before it, is very different from the account

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given of it. I refer especially to those cases, a very large proportion of the whole, in which no professional assistance was employed, but the complainant came immediately to the court with his statement of alleged grievances; in many of these cases, where he had no claim to redress even on his own showing; this was explained to him at the instant, and his claim was quieted, without the actual institution of any suit, or the incurring of any expense. In many others, where he appeared to have a claim of such a nature as to admit of an easy adjustment with the opposite party, the defendant was desired, without the issuing of any regular process or institution of any regular suit, to attend with the plaintiff on an early day, and the case was very frequently arranged without difficulty or expense, on hearing the statement and admissions of each party. It was only when it was clear, in the first instance, that there must be a disputed question, to be settled by evidence, or where these attempts at a preliminary and amicable adjustment failed, or where the nature of the arrangement was such that it required some act of the court to authenticate and secure it, that any formal proceedings were adopted in these cases; and even then they were of the simplest description; the parties going to the registrar's office, and having their own statement of facts on each side taken down, with the rejection of all the immaterial circumstances with which the party's own narrative never failed to abound, and receiving information what were the points really asserted and denied, and the matters which it was necessary to support by evidence. I am not aware that there is anything "complicated or unintelligible" in this; and as to delay (except in some cases where evidence might be at a distance, or not easily accessible, or where a case of more than usual perplexity required more than usual preparation, or where the parties themselves would not take the trouble of giving early information as to the witnesses they wished to produce, or active assistance in their discovery), I believe there was very seldom a case of the kind I have described which, if it went to a trial at all, was not finally and completely disposed of within a fortnight or three weeks from its institution, and often considerably sooner. I speak from recollection, and have no means of ascertaining a correct average; but I have no fear of being materially inaccurate. Such proceedings could hardly be expensive, except indeed that, where any suit was actually instituted, there was a per-centage paid (one per cent., I think) on the amount of the claim; and, where there was a judgment, the same proportion was paid on the amount recovered. Besides this, where there was an arrest, which, however, hardly ever happened in the class of cases I am now speaking of, there was a further payment of one per cent. on the amount sworn to. These charges, however, were not occasioned by the procedure of the court; they would be the same whatever procedure was adopted, and would be fit to be abolished or retained as they were or were not found oppressive, or as the necessity of raising a fund in some degree commensurate with the expenses of the court was denied or admitted. The mere fees paid in the office of the court for specific work done were certainly low in amount, for the rate of payment was not high, and the simplicity of the proceedings made the whole quantity of work little in each case.

12. In cases where professional agents were employed, there was of course more of expense, more of complication occasionally, and somewhat more of delay; yet even in these cases, the general outline of the proceedings was the same as in contested cases of the nature I have already explained. Indeed, as there had been no professional judge there for some years before my arrival, and only an agent practising in the court who had practised before my predecessor, the proceedings of the agents naturally followed, in a great degree, the example of the cases conducted entirely by myself and the officers of the court; and I occasionally anticipated that my successor might complain of me as not having done enough towards confining the practitioners in the court to a technical and regular conduct of business; I certainly did not expect to hear that the proceedings were too artificial. Again, with respect to delay, though as I have already stated there was occasionally more in these cases than in the other class, they were in much the largest proportion of instances dispatched with equal rapidity; and that the delay could never be very long will appear from this, that I was never more than six weeks at Singapore on any single circuit; that I very rarely found more than one or two causes commenced before the resident judge or judges of the court, and awaiting my arrival; and that I believe I never left a single cause which had been pending before me undisposed of, except in a few instances where parties came in to commence proceedings within three or four days of the time fixed for

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my departure, and when it could not be delayed without unsettling arrangements previously made at other settlements. At Penang I have known one or two cases involving the settlement of family accounts, or requiring the production of evidence relating to a distant period, which have been rather slower in maturing; but three months would even then, I believe, decidedly exceed the longest duration of any cause that was heard before me.

13. What procedure of the court is particularly referred to I am, of course, not able to say; it may be that of other recorders, who may have adopted a more strict and technical course than I thought expedient, though I have no knowledge that this has been so; or it may be that non-professional judges, in cases especially where professional agency has been employed, have allowed themselves to be hampered and perplexed by objections which a lawyer would have felt less difficulty in breaking through. But I think I may say that the procedure of the court has not been uniformly objectionable on the ground of expense, complication, or delay, the complaints made of it; and that if these are the faults imputed to it, the court need not be remodelled (independently of considerations of expense, of which I am now not speaking) on the ground of its being necessarily, or having been uniformly an evil.

14. Still, even if faults have been imputed to the existing system which really are not found in it, the new system of administration may be likely to work better, or, at least, as well. The principal advantage expected from the change, besides the correction of those imputed evils of delay, intricacy, and formality which I have already spoken of, appears to be the introduction of the Malay language into the proceedings of the court. To this, both the Governor-general, in paragraphs 413, 14, 15, and Lord William Bentinck, in the passage there referred to, attach high importance. The arguments in favor of this change are very forcibly stated, but they do not, I think, apply so completely as they are supposed to the state of the Straits settlements. As far as I am aware, the necessity of interpretation would not be nearly so completely done away, and the proceedings adopted would not be made so generally intelligible, as the Governor-general imagines. At Singapore especially, where Chinese are continually flocking in, a large portion of Chinese do not understand Malay at all, and there is often difficulty even in procuring Chinese interpretation, from the variety of dialects of that language. The Chuliahs again, a large and very litigious portion of the people, and at Penang an important one, seldom stay more than a few years in the country; often only one or two seasons; live very much among themselves, and speak little except their own language. Although, therefore, it is perfectly true that most foreign residents "find it necessary to acquire the Malay language more or less," the acquirements of a very large portion of them are very small, not enough to enable them to give evidence or understand proceedings in that language, except very imperfectly, and yet, perhaps, in many instances sufficient to enable them to do so in some degree, and thus to allow the proceedings to be conducted in a language ill understood and inaccurately spoken. Interpretation is undoubtedly a great evil, but where the choice is between interpretation and the forcing parties to use a language which they speak with difficulty, I have always found the former the less inconvenience.

15. These observations only apply to the question as it respects the suitors of the court, and bear only on the degree and amount of advantage supposed to be obtained. But the question affects the judges also, and still more materially; they, at least, ought to have a full and intimate knowledge of the language in which they are to receive evidence, to deliver their judgments, and, I suppose, to record their proceedings. Now this can only be secured by their being long resident among a Malay population; I doubt, indeed, even if that can be said to secure it. I doubt whether the majority of the government officers now in the Straits, although they have long resided there, would be found to have that degree of knowledge. They would all, probably, be able to get on, but that ought not to be enough; on this however I will not dwell: if the familiar knowledge of the language became more important, as the proposed change would make it, the requisite familiarity would probably be obtained; but it could only be obtained by length of residence, and it would be best obtained by that residence commencing early. For these purposes the service of the Straits, even if nominally attached to that of Bengal, would in substance remain a distinct service, consisting of three or four young men in preparation for those important duties, and of a similar number of men of maturer age, discharging them with little prospect of being ever removed from their

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their appointments, for the difference of language, manners, and institutions would render long-continued service in the Straits no preparation for service elsewhere. It is intended, I understand, from the Governor-general's Minute, materially to reduce the emoluments of the government officers of the Straits; the highest situations which can be reached there will consequently be very small prizes when compared with those to which all Indian officers look forward as what they are likely ultimately to attain. If, therefore, the service of the Straits continues nominally distinct, it will be an ineligible service, and command only candidates of an inferior description; if it becomes a part of the Bengal service, the appointments will be ineligible appointments, and as such will be given to officers of little promise. All stations must have their share of such appointments, but there would be great danger that the proposed plan would condemn the Straits to an habitually inferior administration.

16. Were it not for this danger I should not treat the proposed plan, or almost any other which would secure the service of competent and intelligent men, as insufficient for the due administration of justice in much the largest proportion of the cases arising in the Straits. With respect to them, it is not a question of the law of England, or any other law; it is the law of all countries alike, that a man who receives goods which he has bought shall pay their price, and that the seller who has received the price shall deliver the goods; that a borrower shall repay the loan, and that a person who injures another's property shall make good the damage. The bulk of the business of the court in the Straits consists in enforcing these rights; and this may be sufficiently done by any person of sound sense and discriminating understanding, though the habits of a particular profession may give some degree of peculiar facility or unfitness (for both are occasionally imputed) for judging of evidence.

17. The mere local transactions of the Straits are generally of the character abovementioned, and this just as much with respect to Europeans as to others. Indeed the most difficult and complicated cases in point of evidence have generally arisen at Penang, where the earlier occupation of the island has given more opportunity for the creation of complicated family relations, and doubtful and imperfect derivative titles. It was partly from the accident of my visiting Penang first, partly at the suggestion of the officers of the government who wished me to have my own house, where they had no public buildings available for my occupation, and would therefore have had to incur expense in procuring me accommodation if I only visited that place on circuit, that I fixed my principal residence there; but I felt fully convinced afterwards, that partly from the considerations I have mentioned, partly for temporary and occasional reasons, which it is not necessary to discuss, it was the place in which it was most desirable, for the general administration of justice in the Straits, that I should spend the longest time. And the same would, I apprehend, be the case with my successors to the present time. Had I considered the services of the recorder desirable, as is suggested with reference chiefly to the European portion of the population, of course Singapore ought to have been my principal residence; but I entirely deny the existence of any such reason: as Europeans I never considered them entitled to any preference.

18. The peculiar importance of having a professional judge in the Straits, arises in my judgment out of the commercial character of the settlements there, and the resort thither of foreigners of all nations. An erroneous decision on the regularity or irregularity of the presentment of a bill of exchange, or the sufficiency of the notice of its dishonour, would compel a merchant to make payment at Singapore which he ought to be able to recover from the next party to the bill in London, but would not, because they would require real regularity. This is a case not unlikely to arise; a Company's servant unconnected with mercantile business would probably draw his notions of it very much from the practice of the place where he lived. At Singapore this practice is very lax, so much so that an attempt was once made before me to establish "a custom of Singapore," to transact ordinary mercantile business in an irregular manner; of course I did not recognize any such custom, or treat men who had received their mercantile education in Great Britain or India, as entitled to relieve themselves from the ordinary restraints of the regular conduct of business, by setting up any lax usage of so recent introduction. Nor (though some of the passages referred to by the Governor-general in the 407th para. seem to show that judges, appointed under more favourable circumstances than they would be on the projected plan, might be

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be ready enough to dispense with the rules of law in any case where they thought it inexpedient to apply them) do I suppose that any non-professional judge would have allowed of such a custom, claimed expressly as an exception from the ordinary rules of law, but he might very easily fancy that the practice of the place where he lived was the real "usage and custom" of merchants all over the world, and the consequence might be such as I have already adverted to.

19. This is only an instance; and negotiable instruments are more likely than anything else to furnish such instances and occasion such inconvenience. But similar difficulties might arise on a variety of other mercantile contracts and securities. The law of insurance, for example, is one of considerable intricacy, and there are agents in the Straits for several insurance companies, and no insurances probably are effected except by them; but in these cases the parties really interested will generally be resident at a distance, and will construe their contracts and estimate their liabilities according to the ordinary and legal understanding on such subjects.

20. There remains another class of cases of less frequent occurrence, but in which the consequences of an erroneous decision might be yet more important. I refer to those in which international rights might come in question, or national interests might be involved. A case occurred just before I left the Straits, and was adjudicated on by my successor, Sir Edward Gambier, in which the salvage of the cargo of an American ship, or rather a claim in the nature of salvage, was the matter of dispute. The circumstances were very peculiar, and it is not necessary to enter into any detail of them; but it was a case full of difficulty, and one which in the event of any decision decidedly illegal, might not improbably have become the subject of controversy on the part, not of any private individual only, but of the American government. The court in the Straits is now about to receive Admiralty jurisdiction, a change most desirable in itself, but which is likely to lead to the more frequent occurrence of questions involving similar considerations and open to similar consequences.

21. I do not advert to these circumstances as furnishing any decisive argument against the proposed change, but their existence introduces additional difficulty into the subject, and gives at least a much better reason for the institution and continuance of the court as it has existed, than that assumed, of its being useful only for the sake of the few European inhabitants. It is necessary, therefore, as it appears to me, to state them, for the purpose of putting the question on its true grounds, whatever may be its decision when it is so placed.

22. This result probably ought very much to depend on the efficiency of the projected scheme of appeal. And I would not treat this as decidedly insufficient, though there are many inconveniences attending any plan which relies on appeal to correct the deficiencies of an ill-constituted court of original jurisdiction. If the court of appeal act principally as a court of error, it will leave much of inadequate and unskilful decision uncorrected, for it must assume the propriety of everything which is not ascertained to be wrong; if on the other hand it acts more strictly as a court of appeal, and rehears all matters where the parties are dissatisfied with the decisions, there is the danger, especially if the original administration is unsatisfactory, that almost all cases where there is a possibility of doubt, and where the party is not prevented by poverty, will undergo the delay and expense of two trials. These are evils not equally attaching to the present system, where the absence of the recorder from a particular settlement has been much compensated by the opportunity of consultation in the earliest stages of a cause, or previous to its final decision; for such, however mischievous the opinion of a professional judge may have been considered, was the very frequent practice.

23. Still I do not consider this plan of appeal as decidedly insufficient, though I cannot see in it any improvement, except upon the score of expense; but to make it at all efficient, it would be necessary, I think, looking to the amount of business likely to be brought before the appellate judge, and especially to the very fluctuating character of the population, which makes delay in the final administration of justice peculiarly liable to amount to a denial of it altogether, that there should not be less than two of these circuits of appeal in the year, and this leads to important considerations as to the best mode of carrying the plan into effect, if it be decided to adopt it.

24. But before discussing these, I must advert to one passage of the Governor-general's Minute, founded on information which I cannot exactly call inaccurate, but which certainly does not lead to a very trustworthy conclusion. I refer to the observation

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observation in the 451st paragraph, "that the certain presence of a professional judge once a year will really be more than any one settlement has had under the present system." This is founded on a statement of Mr. Bonham's, that from October 1824 to February 1833, a period of eight years and four months, the settlements have had the benefit of a recorder's presence for only two years. I have already said that this information is not inaccurate. I proceed to show, that like all other averages deduced from a picked season, it cannot be depended on for any trustworthy result. In this particular instance the general principle I have stated applies with rather singular force; the period selected extends from the death of Sir Francis Bayly to my own assumption of office in the Straits, two dates which there could be no reason for choosing, except that they included the most of vacancy, and excluded the most of fulness, of the office of recorder which could be attained: neither date had anything else to fix it as a boundary. The circumstances of the time also were very peculiar. Owing to negligence in some office at home, the charter under which Sir John Claridge derived his authority did not reach the Straits till more than a year after his arrival there; during that period Sir John Claridge offered his services, and they were generally accepted, as a sort of assessor to the lay judges of the court; during this time the judgments were of course, in form, the judgments of the lay judges, and there was not the "presence of a recorder," and the lay judges performed the whole judicial business without the assistance of a "professional judge," but not so completely without professional assistance as to allow that period to be fairly reckoned into the account of vacancy. After a time the unhappy differences between Mr. Fullerton and Sir John Claridge occasioned the recall of the latter to England, to meet the inquiries which took place; and thus for two years and a half there was the absence of the recorder without the vacancy of his office; and at the end of that time the recorder appointed had to proceed from England to Penang. The circumstances are too peculiar to render the long intermissions in question of much importance in estimating the probable average of vacant periods; I do not of course mean that this interval ought to be excluded in forming any average, though the particulars I have referred to might prevent a mere numerical average from being of any very great value; but certainly it ought not to be taken as the whole experience from which the average is to be derived, especially where the informant must probably have remembered, and certainly might have known, that from the first opening of the court in 1807 to the date at which the period he has chosen commences, was no less than 17 years, during which the office of recorder was vacant only for very short intermissions between the departure of one judge and the arrival of his successor, and probably for not more than a year in all, and where, from the date at which his period closes to the present time, he must certainly have known that the office has not been a single day vacant.

25. This is perhaps the most convenient place for noticing also an observation contained in the following (the 452d) paragraph: that the proposed judge of appeal, though he will be a stranger to the Straits, will be little more so than the recorder has hitherto been. It is certainly true that of late the recorder has never been more than a very limited time in the Straits; it was not formerly so to the same extent, for Sir Edmund Stanley served at Penang for eight years before his removal to Madras, and Sir Ralph Rice for nearly seven before he went to Bombay. The evil, however, of late has been a very great one, but it is one not necessarily incidental to the system; it would cease to exist if the system of translation were abolished, and there is no good reason for its continuance, for the Straits furnish very little of an apprenticeship for the continent of India.

This is no new opinion taken up in answer to the argument suggested; it is one which Sir John Claridge expressed most decidedly during his tenure of office, and which I stated myself, as strongly as I could, to Lord Glenelg, while I was in the Straits, and when I had no expectation of being removed from them, though, in fact, my appointment to Calcutta took place about the same time that I dispatched my opinion against such changes; I have, therefore, rather a better right than usual to condemn a system of which I have myself received the benefit.

26. But to return to the consideration of the projected plan of appeal. I have already stated my reasons for thinking that there ought not to be less than two circuits in the year; reasons, it will be observed, which do not depend on any comparison of the proposed and existing system, but on the actual nature and amount of business. It is impossible to estimate with any correctness the length of time necessary for each circuit, but I do not imagine that three months would, at the commencement

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commencement of the system, be an exaggerated conjecture, when due allowance is made for the length of the voyage and the slowness with which any new system works at first; nor do I think the time would be much shortened afterwards, unless the local judicature performed its functions better than I venture to anticipate that it would under the reduced and unfavourable circumstances to which I have already referred. None of our vacations here are so long as this; and the two longest, which are fixed to the periods much most convenient for the administration of justice here, commence at the interval of less than four months from each other, and would not therefore correspond to convenient times for the fixing of two circuits, which ought to divide the year as equally as possible. On both accounts a judge could not be sent from Calcutta for the complete and adequate dispatch of the business required to be transacted, without leaving the Calcutta Bench for a very material portion of the busiest times of the year, in the worst of all conditions for the administration of justice, for such I consider a bench of two judges; many persons think a single judge preferable to a bench, though I confess I do not concur in the opinion. But no one, I believe, seriously doubts that a bench of two judges is the worst possible arrangement. Sir James Mackintosh, indeed, during his tenure of office at Bombay, was anxious to have a colleague; but there were many circumstances in his character which would make him wish for divided labour and divided responsibility; and his only reason for wishing for a single colleague was probably the feeling that he could expect no success in asking for more. With this exception, I believe no one has ever treated such a constitution of a court as in itself eligible.

27. Such however, practically, though not according to their charters, is the constitution of the courts at Madras and Bombay; and there is one very important reason for not further reducing their establishments, that without any provision for the temporary administration of justice during illness or upon death, it would be dangerous to leave any court provided only with a single judge. But though the risk avoided is a sufficient reason in this country, and at this distance from England, for preferring a court of two judges to a court of one, there is nothing but evil in reducing a court of three judges to a court of two; and it is to me a very serious objection to the plan of appeal proposed, that it would, if unmodified, have that operation during a material portion of the year at Calcutta: the judges, who would get a pleasant and healthy expedition, would be the only gainers.

28. The plan seems, however, to admit of an easy modification. If there were at any one of the presidencies where it was thought most desirable to make the addition, an extra judge, and the judges of that presidency were authorised to supply any occasional vacancies whenever they occurred, there would be the means of providing for these circuits, and also of meeting all temporary exigencies. It would then be unnecessary to have more than one judge at Madras and Bombay, if the additional judge was stationed at Calcutta; or if it were thought more eligible to station him at Madras or Bombay, the same provisions would be sufficient, with only the addition of a power to the Calcutta judges to make these circuits in the Straits, in the event of a vacancy, or the permanent illness of a judge at the other presidencies, so that the additional judge for a time was obliged to be stationary. In this manner the bench of Calcutta might still sometimes be reduced to two judges only, but it would only be an occasional inconvenience on the plan proposed; it is a continually recurring incident of the system. Perhaps, however, on this account, and still more from the considerations stated by the Governor-general in the 447th para. of his minute, Calcutta would be the most convenient place for the additional judge to be stationed at.

29. If the proposed alterations take place, I cannot but think that this modification of the proposed plan would improve the constitution of the courts at Madras and Bombay, and it would produce some reduction of expense also. It may appear that the same provisions might be sufficient also for Calcutta; the presence of a single supernumerary judge, however, would not be enough to provide for all contingencies, which the presence of a full bench in Calcutta furnishes the means of meeting in cases of emergency. On the contrary, if there were only four judges of the Supreme Courts in India, the death or permanent illness of one of them would render the presence of the others necessary all the year at their own presidencies, for there is business requiring immediate dispatch all the year round, and thus the provisions for circuits in the Straits would entirely fail. And even independently of this consideration, the business of the court in Calcutta is more

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in point of labour, and more important in point of amount, than it would be safe or satisfactory to leave permanently in the hands of a single judge, liable to all the accidents and disqualifications of an Indian climate, and with no power of redressing his errors or omissions except by the tedious and expensive process of an appeal in England. Where even that remedy exists, a single judge at Calcutta would find it hardly possible, at any period of the year, to secure to himself three days consecutively of intermission from his duties of attendance in court or at chambers: the consideration and examination of authorities, accounts, and documents, out of court, I do not speak of. This is a statement which will, perhaps, hardly be anticipated, but the duties which are easily divided among several, would all have to be performed by one. As it is, without speaking of the public business of the term and sittings, which is not likely to be overlooked, during the periods of vacation, one judge sits twice a week regularly in chambers, and, on an average, rather more than once a fortnight in the Insolvent Court. The business of chambers occasionally includes very heavy and important equity motions. The business of the Insolvent Court has become in this place (not at Madras or Bombay, where they have happily been exempt from the great failures which have occurred here since the passing of the Insolvent law), one of the most important occupations of the court. The Insolvent Court, indeed, is in substance much more a Court of Bankruptcy than a mere Insolvent Court in the English notion of such an establishment, and here it has unfortunately had to deal with several of the largest failures which ever took place in the commercial world, and which have led, and are still leading, to investigations of unusual complexity and importance. This business in chambers and in the Insolvent Court is not interrupted by the sessions of oyer and terminer, for one judge sits to dispatch it while another is engaged on the criminal side of the court. But were there only one judge here, either the civil business now dispatched during the criminal sittings must be postponed till their close, and added to the engagements of the rest of the vacation, or, which would be more convenient to everybody, except jurors and witnesses, there must be occasional intermissions of the criminal sessions to allow the dispatch of other business, and the sessions of oyer and terminer would thus be prolonged. In either case there would be entailed on a single judge a degree of labour, when combined with his necessary occupation out of court on court business, which could not safely be imposed on any one, without the opportunity which other functionaries whose labours are nearly unremitting possess, of temporary and occasional relief by the substitution of an acting officer in case of temporary disqualification; the additional judge indeed, when not necessarily employed elsewhere, might occasionally interchange duties with the judge of Calcutta; but this would be undesirable unless rendered necessary by circumstances, from the impossibility of finding any period when the approaching business was not so closely connected with that which had preceded as to render it very expedient that the same judge should dispatch it.

30. It will be observed, that the above proposal nearly coincides with that suggested, on different reasons, by the Calcutta civil finance committee, in the 5th paragraph of their letter to the Governor-general in Council, of 28th June 1830, as printed in the General Appendix to the Report of the Select Committee of the House of Commons on the Affairs of the East India Company, in 1832. It is partly on their authority, partly from the practice of not filling the third seat at Madras and Bombay, and not from any personal knowledge, that I infer that the administration of justice there would not require the presence of the full court, which I think necessary to be retained at Calcutta, and which the finance committee did not propose to abolish there. But on these matters, connected with other localities, I wish rather to be considered as offering suggestions, than expressing any decided opinion, except that of the preference of one judge to two only.

31. I have now closed all the observations which I propose to make on the plan suggested, treating it as a measure of actual improvement. If am right in the apprehensions I entertain with respect to the constitution and efficiency of the proposed courts of original jurisdiction, I confess I cannot but fear that the general effect of the change would be that of retrogression; even if these apprehensions are exaggerated, still I can see nothing of advance.

32. On the other hand, I do not see, except on the ground of those apprehensions, any reason to suppose that the proposed system would not, with the modification I have suggested as to the provisions for appeal, secure a very sufficient administration

administration of justice. If the original court proved really a bad one, no appeal would remedy the evil at all completely; if it were merely less good than might be desired, the remedy might be sufficient, and the general system very tolerable in its operation; if this were considered to be its nature, the question of economy would very fairly come into the account.

33. I fear, however, that the amount of saving to be expected from the proposed change, is overrated. Considerable reductions in the salary of the lay judges are said to be intended, and a reduction of 18,000 rupees in the expenses of the court to be thus rendered possible even in the present system. It is said, also, in paragraph 455, to be possible to save a sum of 27,450 rupees at some future time, without the abolition of the court. The particulars of these reductions are not stated, and I have no means of judging of their feasibility or eligibility; but if they can be made without rendering the court inefficient, they ought of course by degrees to be so. If made, they reduce the real saving which is now estimated at 93,620 rupees to the sum of 66,170 rupees, a considerable and important sum, though hardly large enough to form a very material article of charge on the general revenues of India, which it is the object to protect; but even this saving must, I think, be materially reduced. I cannot enter into detail on this subject, though I much doubt whether the actual expenditure of the new court would not be greater than the estimate made of it, unless efficiency were completely sacrificed to economy. In particular, I very much question whether the services of competent clerks, considering the variety and extent of the duties imposed on them, that they are to be interpreters, translators, and accountants, as well as to perform the ordinary duties of clerks, could be secured for the salaries assigned them; but as I can assign no numerical amount to any increase which may become necessary on this score, I will not include it in my observations.

34. But at all events, if I am right in thinking two circuits necessary, the expense of a second circuit will have to be added to the expense of the proposed new court, and deducted from the amount of saving, which will therefore, according to the estimate of the 453d paragraph, be reduced by 10,000 rupees.

35. It will also be reduced by a material diminution of the expense attributed to the existing court. It is true, as the Governor-general observes in a note on the 429th paragraph, that the circuit expenses of the court have been underrated; they have been so even more than appears there, for I went two circuits in the "Clive," with the exception of the voyage from Malacca to Penang on the second of them, which was performed in another vessel, the "Clive" being dispatched on a different service; this more than counterbalances a circumstance which is not worth mentioning, except inasmuch as it furnishes some evidence of the bias imputable to all information received on these subjects, namely, that the vessels taken up for the conveyance of the recorder, were always used during his stay at the places he visited, in the transaction of other government business, the transport of troops, the removal of commissariat stores, &c. &c., but that the whole amount of the hire of the vessel has been, I believe, uniformly charged to the debt of the court, without any allowance for the expenses thus incidentally avoided; a smaller instance of the same kind may be found in the charging against the court the whole rent of what is called the court house at Singapore, though it contained also a very large portion of the government offices.

36. These circumstances, however, are immaterial to the present question. The latter charge is not included among those which the Governor-general attributes peculiarly to the existence of the recorder's court. The former is one which for the future, and we are considering prospective savings only, ought to be altogether omitted. The Governor-general, in a note to the 453d paragraph, reduces the estimate formed by Mr. Bonham of the cost of the proposed court, by disallowing anything for the expense of conveyance in the Straits, because there is a steamer stationed there. The same expense must be disallowed, for the same reason, in any prospective estimate of the charges of continuing the present system; and the consequence is, that the sum of 11,702 rupees, the sum charged for circuit expenses on the accounts as they are now framed, omitting the items for batta and contingencies, which would remain unaffected, and which are not reduced by the circumstance that some of the voyages were performed on board the Clive, must be deducted from the estimated expenses of the court as it exists, and consequently from the anticipated saving. This saving, therefore, would be reduced by these two sums of 10,000 and 11,702 rupees, and would finally amount only to 44,468. The difference between this sum and that stated in the Governor-

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general's Minute, may not very materially affect the question; but if the statement relied on is, as it seems to me, erroneous to this extent, it is at least desirable to correct it.

37. There might appear to be another ground of reducing the estimated saving, for if the present system of procedure is expensive, any improvement which reduced that expenditure, would reduce the receipts of the courts, and therefore apparently increase its expenses. I have already, however, explained the grounds on which I am of opinion, that no material diminution of expense could be expected, except by the abolition of the per-centages which I have explained. Nor is it in any case very material, as the Governor-general has made no allowance for these fees in his estimates; and has, I think, correctly omitted them both for the reason stated in the 434th paragraph, and also because, even if they were considered at all to diminish the pressure on the government, they still form part of the cost of the court, although when separately treated, they throw part of that cost upon the suitors. They do not, therefore, affect the question, how great is the total deficiency of Straits revenue, though they would alter the proportion of that deficiency attributable to the court; nor do they vary the disproportion said to exist between the cost of the court, and the pecuniary importance of the business dispatched by it.

38. This is undoubtedly great, as it always must be where a small community has institutions, not insufficient for a large one. I have already stated the reasons which in this case make such establishments desirable, unless the price paid for them is too large for the benefit. Nothing that I am about to say will probably very materially vary the elements for the determination of that question; but at present these statements of facts would in some respects mislead, and it is therefore desirable to correct them. I refer to the statement made of the whole amount of property litigated at the three settlements, which is said to have been no more than 2,93,355 rupees yearly, when proper allowances are made for the effects of the closure of the court. This result is attained by assuming that the whole of the business, which would have occurred during years of the closure, remained for dispatch to the two following years.

39. Nothing can be more unlike the real state of the case when the court was closed; it was the current opinion, an opinion I believe arising very much from the expectations professed by officers of the government, that it would never be reopened. It was, I suppose, imagined that, at some period or other, some provisions would be made for some administration of justice; but their nature, and the time when they might be expected, were all uncertain. The only thing that the officers of government seemed sure of on that, and on every subsequent occasion of an expected vacancy, was that no other recorders would ever be sent out. And this, according to the opinion entertained by the same functionaries of the effect of the change made in the constitution of the Straits government, involved an absolute cesser, or intermission of justice, till some entirely new provisions were made for its administration. The consequence was (a consequence natural everywhere, but especially where, from the continual fluctuations of the population, delay of justice most peculiarly corresponded to its denial), that everything was settled by arbitration or compromise, and compromise often on the most inadequate terms, because anything was preferable to nothing; and the practical result was, that when I arrived in the Straits in February 1833, I found no heavy arrear of business awaiting me, as I had expected; a very few causes indeed there were, but not I believe enough to make the amount decided on in my first year materially, if at all, exceed the average of those which followed it. It is indeed true that the court had been for several months reopened, but Mr. Ibbetson, who had dispatched a great deal of criminal business, had as far as he could, postponed all civil business for my arrival, yet the result was such as I have described.

40. The practice which I have mentioned, of disposing of many cases by concession and arrangement between the parties, moderated, if I may use the term, by the judge, is also to be borne in mind on this subject. These cases occupied a large portion of the attention of the judge; but would not, from the manner in which they were settled, be included in any return of regular business: this would not very materially affect the numerical results of any such return; for of course these cases were generally of small amount, but they are by no means to be left out of view in considering the real utility and efficacy of the court.

41. There is another reason also why this mere statement of the amount of property adjudicated on, conveys an inadequate notion of the functions of the court; I apprehend

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I apprehend that it does not include the value of property in respect of which administration or probate is granted. This amount ought not to be reckoned equally with that of property adversely litigated; but still it forms a very material element in the statement of the services rendered by the court, and it will become of yet more importance, if any measure of the nature of that to which I took the liberty of calling attention in my last letter should be adopted; but it is of still more consequence to observe, that any mere pecuniary statement necessarily altogether omits the criminal proceedings of the court; under the circumstances of the Straits, perhaps its most important and laborious functions. The calendars of the Straits are very fluctuating, though more, perhaps, from the uncertainty of the detection of crime than from any very great variation in the amount of crime committed; but they are sometimes very heavy, especially with regard to crimes against the person. I remember having held two successive sessions of oyer and terminer at Penang, with none but trivial offences in the calendar, and on the second occasion with only one of these; and then, after an interval of only three months, I found six murders standing for trial, and, I think, five other cases where a coroner's jury had found inquisitions of wilful murder, but no party had been apprehended. This is the heaviest list of offences I remember; but even on the two former occasions there were several similar inquisitions, though the cases for trial were as trifling as I have mentioned.

42. Many of these latter observations may be of little importance with respect to the chief practical question, as to the alteration of the judicature; but I thought I should best fulfil the purpose for which the Governor-general's Minute was communicated to me, if I supplied everything which occurred to me as necessary to a complete understanding of the existing system. I have already expressed my regret that the manner in which one set of facts only have been hitherto represented, made it unavoidable for me to do little but detail the opposite.

43. I am not aware that I need further prolong this letter, except by a few observations on the 421st and 428th paragraphs of the Minute; as the provisions recommended in the former of these are generally based on suggestions of my own, I need not notice them, except where something of explanation appears necessary, as the provisions would become important if the court is not entirely remodelled in the manner suggested.

44. The first passage which calls for any observation is the second recommendation of the 421st paragraph. There can be no doubt of the expediency of getting rid of the provisions for summoning the recorder, &c., in the 33d page of the charter; and it would, I think, be very expedient to provide more clearly and distinctly for the discharge of judicial duties by the lay judges at the settlements, where the recorder is not at the time present. I am myself, however, satisfied of the legality of such proceedings, which I consider to be founded entirely on the provision in the 13th page of the charter. When that provision was first introduced in the charter for Prince of Wales' Island only, it was probably intended merely to meet cases of occasional exigency; as for instance, when the recorder was disabled by illness; yet there was neither his absence, nor the vacancy of his office to introduce the other provisions of the charter. When the same charter, with very few modifications, though many might have been beneficially introduced to suit the altered circumstances of the settlements, was granted to Prince of Wales' Island, Singapore, and Malacca, this provision gained a wider operation, and enabled the government, which had formerly only had the opportunity of removing occasional difficulties, to remedy a permanent inconvenience. I accordingly found the court in operation at all the settlements, and felt that it was not exceeding its power, except indeed that the necessary preliminary of a regular authority by the Governor so to act, had been omitted. This, however, was supplied for the future; and as far as ratification could supply the want of previous authority, for the past also, and no one ever raised the question whether that ratification would be available. The only difficulty that I have heard suggested on this subject was, that it seemed contrary to the notion of a single court that it should be holding concurrent sittings in different places at the same time, and that on this ground an Act of Parliament had been required in England, to enable the quarter sessions to hear appeals and criminal cases at the same time, in different rooms. The argument is not without force, and it might be well in any future modification of the charter to defeat it, by a more express grant of the necessary, or at least most convenient authority; but I thought the provisions of the 13th page too decidedly contemplated the occurrence of such proceedings to

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make me hesitate about upholding them, even if I might have felt that there was doubt enough to prevent me from recommending such a course, if hitherto unpractised. To procure its abandonment on any ground of illegality, would have been to declare void all the proceedings had under it; and this of course I could not do, without being satisfied that they were so, which was not my opinion.

45. But while the provisions of the 13th page acquired additional efficacy by the extension of the functions of the court, those of the 33d page became completely inapplicable, and liable to produce serious inconvenience. The provisions for summoning the recorder admitted of being evaded by the practice which I advised, that the lay judges should make no orders, and do no acts whatever, except in court. But there might have been great difficulty on cases of habeas corpus, had any occurred, because the power given to the Governor in the 13th page, could not enable him to dispense with an express provision of the charter. The truth is, that the section had been merely copied from the old into the new charter, without any consideration how it would apply; and perhaps the same is the case with the provision of the 55th page. This however might sometimes be convenient; a court might be convened by the Governor, or resident councillor, in expectation of the recorder's arrival; juries summoned and witnesses subpœnaed, even though the judge convening the court had not, for want of the authorization required in the 13th page, power to sit in it for any other purpose but to adjourn it; and it might occasionally be convenient for the dispatch of business to do so. But the real power of the lay judges to transact business in the absence of the recorder, rests, I apprehend, entirely on the provisions of page 13, and is not affected by the other passages referred to. The whole charter is in many respects so ill-devised an instrument, as applied to the present jurisdiction of the court, that difficulties must always arise in considering it; but I apprehend the construction I have stated, to express the true constitution of the court.

46. The next suggestion (the third of the 421st para.) proceeds, I think, on a misconception of the nature of the difficulty I anticipated. I have never considered the retention of the mere names of government and resident councillor of any importance; on the contrary, in almost the first case I decided as recorder, I held that the closure of the court on account of the discontinuance of those titles was illegal, and that as long as there continued to be one general head of the three settlements, and a principal local officer at each, those gentlemen were the lay judges of the court, by whatever names of office they might be described. In determining thus, I apprehend that I only expressed the same opinion as that entertained by the Court of Directors, acting, doubtless, under legal advice, who, when they directed the resumption of the former titles of office for the purposes of the court, did it expressly for the mere removal of doubts, and with an intimation that the court ought not to have been closed. But questions of more difficulty might arise, if by any change in the general system of administration there ceased to be officers filling situations at all of the same character as those contemplated by the charter; and I imagined it possible that any alteration made might destroy the united character of the settlements, and make each perfectly independent, and corresponding directly with Calcutta. If there had thus ceased to be any general head of the settlements, it would become difficult or impossible to carry into effect the provisions of the charter, for there would be no one holding functions analogous to those of the governor. There would, therefore, not merely be a vacancy of the office of one of the judges, but there would be a permanent and fundamental alteration in the constitution of the court; and my object in drawing attention to the subject was to point out this difficulty, and the doubt which might arise whether a change of the system of government which would involve these consequences would even be legal, unless a corresponding alteration of the charter was obtained from the proper authority. I never contemplated the taking away judicial power from the local authorities; I was only apprehensive that in a possible event either they might lose it, unless care was taken to preserve it to them, or also a change, considered desirable in itself, might fail of its effect, because it would involve consequences which could not be allowed. No such change, however, has been made, or appears to be contemplated, and the suggestions made with respect to it, therefore, lose their importance, even if the more general and sweeping alterations advised should not be adopted.

47. The fourth suggestion of the 421st paragraph, the propriety of removing the exemption of the judges of the court from indictments for misdemeanors, is

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one which occurred to me in looking through the charter for the last time, before closing my letter to Mr. Murchison. I threw it out for consideration without intending particularly to recommend it, though I can see no good reason against its adoption. I have reason, however, to know that the recommendation has given great displeasure to some of the lay judges of the court; and it may perhaps be a question whether the change is of sufficient importance to make it desirable to enforce it where these feelings exist. There is a similar exemption here, by statute, of the members of the government, and as in the Straits the members of the government were the judges of the court, this will probably explain the provision, and might render it proper, at least while there existed an independent government in those settlements.

48. The suggestion of the 428th paragraph, that a bankrupt or insolvent law is perhaps required, is one of great importance. I know no place where such a law is more wanted. The amount of property which it would preserve to creditors would, I believe, be very considerable, and the quantity of fraud which it would check very great; but it would add very materially to the amount of that kind of business which I have referred to as furnishing the principal reason for continuing a professional judge in the Straits, business arising out of commercial engagements contracted with parties at a distance. These engagements, indeed, now exist, and it may seem to make little difference whether they are the subject of inquiry by the court in its ordinary jurisdiction, or under special powers given to it upon cases of insolvency. But this is not the case. In very many instances where the affairs of a party become embarrassed, the creditors on the spot have so much greater facility of enforcing their claims, that they sweep away everything; and by the time that the creditor at a distance becomes aware of the necessity of vindicating his rights, he becomes aware also that he could gain no practical advantage by doing so; when this was reserved to him in the shape of a dividend rateably with other creditors, his claim would be advanced, as it is, it sleeps.

49. I have now finished the observations I feel it necessary to make; for where I have already expressed my opinion in the letter referred to, I do not feel it necessary to restate it, except in cases where it requires to be in any degree explained or qualified. But I may perhaps be allowed to mention, with reference to 422d paragraph of the Governor-general's Minute, the circumstances of two of the cases to which I referred, as furnishing some reason for my thinking that some of the reductions made did really offend against the principles which his Lordship recognises as fully as myself, and did not fall within the exception which he makes as to places whose emoluments have long been notoriously extravagant and unsuitable; one of them was a reduction from 64 to 60 rupees a month, a change so small, that the only substantial effect would be the introduction of that feeling of insecurity which we agree in deprecating. The other, to which I most particularly referred in my letter to Mr. Murchison, was not a slight reduction as far as the individual was concerned. I there stated it as the reduction of more than half a salary, after 25 years' service; I believe the reduction was to 20 rupees from 52. Now both these officers were interpreters, both therefore, even on their original salaries, receiving less than the amount assigned to interpreters by the Governor-general in his scheme of expenditure for the new judicial establishments; neither therefore fall within the exception of persons receiving extravagant emoluments. I mention these as the extreme cases of severe and of trivial reductions. Many other of the reductions made might fall between them, but of these I have les distinct recollection; nor should I in any case feel it necessary to detail them, as my principal object in now adverting to the subject is merely to show the real nature of those cases where my observations or interference had most peculiarly that character of advocacy of particular interests, which may, from the circumstances I have already referred to, perhaps be attributed to the present letter.

50. I have now only, in conclusion, to request you to lay the above observations before the Governor-general in Council. In combination with my letter of the 17th July, they furnish all the information and suggestions I can offer on the very important subjects of his Lordship's Minute.

I have, &c.

Allipore, 16 Sept. 1837. (signed) *B. H. Malkin.*

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MINUTE by the Honourable *H. Shakespear*, dated 27th September 1837.

Sir B. Malkin's letters on the Recorder's Court in the Straits.

THE passing of the late Act on the succession to landed property in the Straits has disposed of one of the most important points discussed in Sir Benjamin Malkin's letter of the 17th July. The reference to Mr. Commissioner Young will probably elicit some useful information as to the expediency of constituting courts of petty or quarter sessions, the appointment of local accountants-general, and the sheriffs and other officers of the court.

In his second letter, of the 16th September, Sir Benjamin Malkin has entered more fully into the system of administration of justice in the Recorder's Court. The process of arbitration and adjustment, described in the 11th paragraph, is worthy of all commendation, and places the procedure of the court under Sir Benjamin Malkin's control in a very favourable light; yet in its nature it would seem to depend very much on the personal character and disposition of the judge; indeed, Sir Benjamin seems to anticipate that his successor might complain of his not restricting the practitioners to a more technical and regular conduct of business. The argument, therefore, as far as it goes, is in favour of a reform of the court, by relaxing from the strict technicalities and requirements of English law.

Sir Benjamin, however, strongly contends, and apparently with justice, that the court needs not to be remodelled, on the ground of expense to the suitor, or on the score of complication or delay; but he is less successful, I think, in establishing the propriety of keeping up so costly a machinery for the distribution of justice in the settlements; while it seems quite clear that, if a judge of the Supreme Court from Calcutta must proceed twice in the year to hold sessions in the Straits, little or nothing will be gained in the way of economy by substituting such an arrangement in the room of the recorder's office.

I have read these remarks with great attention and interest; but the grounds assigned for keeping up the Recorder's Court are not sufficiently strong to induce me to alter the opinion I formerly expressed as to the inexpediency, and justice of incurring the present inordinate expense for the administration of justice to a population not exceeding one-sixth of that of one of our ordinary zillah jurisdictions.

Nor do the difficulties of allowing an appeal on the record to the Supreme Court at Calcutta from the local courts in all civil cases of magnitude, similar to the appeal from the Supreme Court itself to the Privy Council, present themselves to my mind as at all insuperable; indeed, I can see no more simple arrangement, none more consonant to existing institutions. While a reference for confirmation of sentence, either to that court or to the government, as in cases of court-martial, might be made in criminal cases, in which the sentence exceeded 14 years' imprisonment, all other cases, beyond the competency of the magistrate to decide, to be disposed of by a quarter sessions and a jury.

Under any circumstances, the institutions of these settlements must be imperfect; but the more I reflect on the subject, the more I feel persuaded that all the essential objects of justice might be obtained by such an arrangement as I have suggested.

(signed) *H. Shakespear.*

MINUTE by the Governor-General, dated 16th October 1837.

Sir B. Malkin's note on the administration of justice in the Straits.

I AGREE with Mr. Shakespear in thinking that the valuable paper communicated to us by Sir Benjamin Malkin, whilst it points out many merits which attended the administration of justice in the Straits during his tenure of the recordership, and perhaps remarks justly upon some inaccuracies in my former Minute, by no means establishes a case against the absolute necessity of reforming the costly and cumbrous machinery of the present judicial establishments in those settlements.

Many of our arguments upon this subject would, however, be shaken, if it were positively shown that two circuits in the year are absolutely necessary, for nothing would be gained in economy by sending a judge from Calcutta for this purpose; but

but an English law court is, even in the opinion of Sir Benjamin Malkin, but little wanted in the Straits, except in a few cases of international right and of mercantile law, and occasionally of landed property in Penang; and surely these rare cases cannot absolutely require two annual circuits, and might, indeed, be almost entirely provided for by local tribunals, with a power of appeal, on points of law, to the courts of Calcutta. The same appeal, or reference for confirmation, might exist in criminal cases of magnitude; and the frequent discussion of the subject, and the many, and I think greater difficulties which seem to attend every other plan, have rather led me, upon reflection, to prefer, even to the annual circuit of a judge from Calcutta or Madras, the best magistracy and the best courts, which, at a moderate expense, can locally administer justice, with regulations for appeal or reference, as above described.

The questions generally before the courts are no questions of the law of England, but of the law of all countries, —that a man who has received goods which he has bought shall pay their price, and that the seller who has received his price shall deliver the goods; that a borrower shall repay his loan, and so forth: such is the bulk of the cases, and, as is remarked by Sir Benjamin, they may be sufficiently disposed of by any person of sound sense and discriminating understanding.

This indeed might be, as is remarked by Sir B. Malkin, a retrogressive step; but it would be more in proportion to the limited income of these settlements than the present establishments, and might sufficiently meet the necessities of their population.

The other and more comprehensive plan, which is ably discussed by Sir Benjamin Malkin, of a court of four judges at Calcutta, and of courts of one judge only at each of the subordinate presidencies, with, I presume, a right of appeal to the former, has much to recommend it, and is well worthy of the careful attention of the home authorities. It would certainly give facilities to the proposal of an annual circuit to the settlements; but the scheme goes far beyond one which has primary reference to the Straits; it is a scheme for all India; it is connected with the much mooted and not very popular question of a single judgeship. Perhaps as a plan for strengthening the Calcutta Bench it hardly goes far enough, for we must look, at some period, to see one combined court of appeal, consisting of King's and Company's judges. But the time for the consideration of an organic change of this kind is not yet arrived.

I need scarcely add that Sir Benjamin Malkin's paper should be submitted to the Honourable Court with the other documents on this subject.

(signed) *Auckland.*

(No. 5.)

READ the following extracts from the proceedings of Government in the General Department.

Legis. Cons. 22 January 1838. No. 5.

EXTRACT, dated 8th June 1836.

No. 60. Forwarding for consideration papers connected with the administration of justice by the Recorder's Court in the Straits settlements, and the attendant expenses.

EXTRACT, dated 18th October 1837.

No. 158. Forwarding letter from the late Sir Benjamin Malkin, Knight, and Minutes by the Governor-general and Mr. Shakespear, on the subject of the Recorder's Court in the settlements.

Resolution.—A separate letter having been this day addressed to the Honourable Court of Directors, requesting authority, under sec. 46 of the Charter Act, to abolish the Recorder's Court as soon as efficient provision can be made for the more economical administration of justice in the settlements of Prince of Wales' Island, Singapore, and Malacca,

Ordered, that the original papers which accompanied the foregoing extracts be now returned to the General Department.

(signed) *R. W. Mangles,*
Officiating Secretary to Government of India.

Fort William,
22 January 1838.

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(No. 15.)

RESOLUTION, dated 24th June 1839.

Legis. Cons. 24 June 1839. No. 59.

READ despatch from the Honourable the Court of Directors, dated the 19th February 1839, No. 2.

Ordered, that a reference be made to the General Department for copies of all papers recorded in that department relating to the question of abolishing the Recorder's Court of Prince of Wales' Island, Singapore, and Malacca, in order to their being referred to the Indian Law Commissioners, pursuant to the orders of the Honourable Court contained in their despatch above cited.

(No. 153.)

EXTRACT from the Proceedings of the Honourable the President of the Council of India in Council, in the General Department, under date the 28th August 1839.

Legis. Cons. 16 Sept. 1839. No. 27.

READ an extract (No. 15) from the proceedings of the Honourable the President of the Council of India in Council, in the Legislative Department, under date the 24th June last, requiring copies of all papers recorded in this department relative to the question of abolishing the Recorder's Court of Prince of Wales' Island, Singapore, and Malacca.

Ordered, that the following papers on the subject of the Recorder's Court in the Eastern settlements be transmitted in original to the Legislative Department, in reply to the extract from that department above referred to :—

Public General Letter (No. 66 of 1831) from the Honourable the Court of Directors, dated the 27th of July, relative to the Charter for the Administration of Justice at Prince of Wales' Island, Singapore, and Malacca, and the Powers of the Resident and Deputy Resident.

Letter from the Secretary to the Governor-general, dated the 21st December 831.

Letter to the Advocate-general, dated the 10th January 1832.

Letter from Advocate-general, dated the 9th February 1832.

Letter to the Resident at Singapore, dated the 14th February 1832.

Public General Letter (No. 61 of 1832), dated the 8th August, conveying Instructions respecting the Recorder's Court Expenses.

Letter to the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 15th January 1833.

Letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated 23d July 1834.—General Consultation, 8th September 1834 (Nos. 7 and 8).

Letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated 21st October 1834.—General Consultation, 22d December 1834 (Nos. 18 to 20).

Letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 22d December 1834, with six Enclosures, being statements exhibiting the receipts and disbursements attendant on his Majesty's Court of Judicature in the Straits, during the years 1832–33 and 1833–34.—General Consultation, 24th May 1837 (Nos. 100 to 106).

Letter from the Acting Governor of Prince of Wales' Island, Singapore, and Malacca, dated 4th February 1835.—General Consultation, 25th March 1835 (No. 5).

Letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated the 28th July 1835, with two Enclosures, being original papers addressed to him by Sir Benjamin Malkin, on the close of his official connexion with the Straits Government, which he conceives likely to prove useful to the legislative authorities in the preparation of new Regulations, and in framing a new Charter of Justice for the Settlements.—General Consultation, 24th May 1837 (Nos. 108 to 110).

Letter from the Secretary to the Government of Bengal to the Secretary to the Government of India, dated the 2d September 1835, submitting the above-mentioned

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mentioned papers for the consideration of the Legislative Authorities.—General Consultation, 24th May 1837 (No. 107).

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 14th December 1835.—General Proceedings, 10th February 1836 (Nos. 3 to 5).

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 5th November 1836.—General Proceedings, 25th October 1837 (Nos. 6 to 8).

Note by Governor of Prince of Wales' Island, Singapore, and Malacca: Land Tenures, Eastern Settlements, and Recorder's Court.—General Consultation, 24th May 1837 (No. 78).

Minute by the Right honourable the Governor-general, and two Enclosures, with other papers connected therewith, on the Recorder's Court, &c., Eastern Settlements.—General Consultation, 24th May 1837 (Nos. 111 to 143).

Letter to the Honourable Sir B. Malkin, transmitting copies of papers on the Recorder's Court.—General Consultation, 9th August 1837 (Nos. 15 to 18).

Resolution: Recorder's Court, Eastern Settlements.—General Consultation, 18th October 1837 (No. 1).

Letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated 4th October 1837.—General Proceedings, 8th November 1837 (Nos. 3 and 4).

Letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, Powers of Admiralty Jurisdiction in the Court of Judicature in the Straits.—General Consultation, 6th December 1837 (Nos. 11 and 12).

Letter from the Honourable Sir W. Norris, Recorder of Prince of Wales' Island, Singapore, and Malacca, dated 12th January 1838.—General Proceedings, 14th March 1838 (Nos. 3 to 5).

Letter from the Honourable Sir B. Malkin, and Minutes by the Honourable H. Shakespear, Esq. and the Right honourable the Governor-general, on the Recorder's Court, Eastern Settlements.—General Consultation, 28th February 1838 (Nos. 2 to 5).

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 27th January 1838.—General Proceedings, 25th April 1838 (Nos. 3 to 5).

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 13th September 1838.—General Consultation, 24th October 1838 (Nos. 18 to 20).

Ordered, that the foregoing papers be returned to this department when no longer required.

(True extract.)

(signed) *H. T. Prinsep,*
Secretary to the Government of India.

(No. 380.)

From *J. P. Grant,* Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland,* Esq. Secretary to the Indian Law Commission.

Legis. Cons. 16 Sept. 1839. No. 28.

Sir,

I AM directed to request you will lay before the Indian Law Commissioners for their consideration the accompanying papers, as per list enclosed, relative to a proposal for the abolition of the Recorder's Court of Prince of Wales' Island, Singapore, and Malacca.

Legislative Dept.

2. You will perceive that the Honourable the Court of Directors have desired that this question should be immediately referred to the Law Commission.

3. You are requested to return the original papers, when no longer required.

I am, &c.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

Council Chamber,
16 Sept. 1839.

No. 2.
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LIST of PAPERS relative to the Abolition of the Recorder's Court of the *Prince of Wales' Island, Singapore,* and *Malacca.*

Extract from a Despatch from the Honourable the Court of Directors, dated the 19th February last (paras. 2 & 3), with its Enclosures.

Public General Letter (No. 66 of 1831) from the Court of Directors, dated 27th July.

Letter from Secretary to the Governor-general, dated 21st December 1831.

Letter to the Advocate-general - - - - - - - 10th January 1832.

Letter from - - ditto - - - - - - - - - 9th February 1832.

Letter to the Resident at Singapore - - - - - 14th February 1832.

Public General Letter (No. 61 of 1832) from the Court of Directors, dated 8th August.

Letter to the Governor of Prince of Wales' Island, Singapore, and Malacca, dated 15th January 1833.

Letter from Acting Governor of ditto, dated 23d July 1834.

Letter to - - - ditto - - - - - - 8th Sept. 1834.

Letter from - - ditto - - - - - - 21st Oct. 1834, with 1 Enclosure.

Letter to - - - ditto - - - - - - 22d Dec. 1834.

Letter from - - ditto - - - - - - 22d Dec. 1834, with 6 Enclosures.

Letter from - - ditto - - - - - - 4th February 1835.

Letter from Governor of ditto - - - - 28th July 1835, with 2 Enclosures.

Letter from Secretary to the Government of Bengal to Secretary to the Government of India, dated 2d September 1835.

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 14th December 1835, with one Enclosure.

Letter to ditto, dated 10th February 1836.

Letter from ditto, dated 5th November 1836, with one Enclosure.

Letter to Commissioner for the Eastern Settlements, dated 25th October 1837.

Note by Governor of Prince of Wales' Island, Singapore, and Malacca, not dated.

Minute by the Right honourable the Governor-general, dated 9th February 1837, with several Enclosures.

Minute by the Honourable Mr. Ross, dated 22d March 1837.

Minute by the Honourable Mr. Shakespear, dated 28th March 1837.

Minute by the Honourable Mr. Ross, dated 6th May 1837.

Draft of Act.

Resolution, dated 24th May 1837.

Letter to Commissioner for the Eastern Settlements, dated 24th May 1837.

Letter to Governor of Prince of Wales' Island, Singapore, and Malacca, dated 24th May 1837.

Letter to the Honourable the Recorder of ditto, dated 24th May 1837.

Letter to the Honourable Sir B. Malkin, dated 5th July 1837.

Letter from ditto, dated 17th July 1837, with one Enclosure.

Letter to Commissioner for the Eastern Settlements, dated 9th August 1837.

Resolution, dated 18th October 1837.

Letter from the Governor of Prince of Wales' Island, Singapore, and Malacca, dated 4th October 1837.

Letter to ditto, dated 8th November 1837.

Letter from ditto, dated 1st November 1837.

Letter from the Honourable the Recorder of Prince of Wales' Island, Singapore, and Malacca, dated 12th January 1838, with one Enclosure.

Letter to ditto, dated 14th March 1838.

Letter from the Honourable Sir B. Malkin, dated 16th September 1837.

Minute by the Honourable H. Shakespear, Esq. dated 27th September 1837.

Minute by the Right honourable the Governor-general, dated 16th October 1837.

Extract, Legislative Department, dated 22d January 1838.

Letter from Governor of Prince of Wales' Island, Singapore, and Malacca, dated 27th January 1838, with one Enclosure.

Letter to ditto, dated 25th April 1838.

Letter from ditto, dated 13th September 1838, with one Enclosure.

Letter to ditto, dated 24th October 1838.

Resolution, Legislative Department, dated 22d January 1838.

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(No. 47.)

Legis. Cons. 13 April 1840. No. 16.

EXTRACT from the Proceedings of the Right Honourable the Governor-General of India in Council, in the General Department, under date the 18th March 1840.

READ again the following papers on the subject of the collection of rents in the Straits settlements:

Letter from Mr. Commissioner Young, dated 1st Nov. 1837, with Enclosures.
Ditto - - - ditto - - - ditto - - 24th July 1838.
Ditto - - - ditto - - - ditto - - 2d Oct 1838, with Enclosures.

Two extracts from the Legislative Department (Nos. 19 and 21), dated 21st May and 19th July 1838, with a Memorandum by Mr. Deputy Secretary J. P. Grant thereon.

Read letter from Secretary to Government of Bengal, General Department, dated 30th January 1839, with enclosures.

Ditto from Officiating ditto, dated 4th instant, No. 292 (A.), with ditto.

The papers above recorded relate to the framing of Regulations for the future management of the land revenue of the Eastern settlements, a duty which, by Sect. 2 of Act XVI. of 1839, has been thrown upon the government of Bengal. They have been referred to the government of India, in order that the principles to be followed out in those Regulations may be fully considered and laid down by the authority that has passed the Act; and the reference is required because the rules now in force in the Eastern settlements were laid down by the Supreme Government in the instructions furnished to Mr. Young (paras. 14 to 31), when he was appointed Commissioner in May 1837, and those rules, and the principles on which they were framed, cannot of course be changed or deviated from in any respect without the sanction of the same authority.

2. As the result of the mission of Mr. Young, the government of India has now to decide whether the system of leases enjoined in those instructions, in conformity with the orders of the Honourable Court of Directors, and maintained in the Act recently passed, is that best calculated to promote the ends of the government and the prosperity of the settlements, and is to be made the basis of all future proceedings in regard to the lands of the Eastern settlements, or whether deviations from the leading principle of that system are expedient, and if so deemed by the Governor-general in Council, whether its authority is sufficient to give effect to the changes determined upon, as a reference to the Honourable Court is necessary to obtain the previous sanction of the authority with whom the system of limited leases originated.

3. The letter of the Governor of the Straits settlements, dated 25th September last, submits the following points as requiring to be definitively settled:—

First. The rate of rent to be assessed upon individuals in possession of land without legal title, to be exempted from rent of the kind referred to in Section 2 of Act XVI. 1829.

Second. The rate of rent to be demanded from future applicants for grants or leases.

Third. If the government adhere to the terms of clearing leases, explained in paras. 23, 24, 25, and 26, of the instructions to Mr. Young, as noted in the margin, is the local executive to be competent to grant leases on more advantageous terms, and to draw the advantage by fine as well as enhanced rent?

Lease to be for 20 years only, renewable for 30, for so much land as may have been for five years cultivated with spices and other specified superior products.

For the first five years - -	no rent.
For the second five years - -	4 annas per acre.
For the third five years -	8 annas —
For the fourth five years - -	1 rupee —
For the fifth five years - -	2 rupees —

(Making 25 years.)

The lease to be given upon auction bid, to the highest offer above these rates, and the rent to be payable on the whole quantity of land taken, not on the cleared land only.

Fourth. It is strongly urged that when a rent of five rupees can be obtained for land at Singapore, the lease be made to run for 99 years.

Fifth. The question is asked, Whether the rent for the renewed period of 30 years is to be fixed in the first lease, and on what terms?

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Sixth. The entertainment of official surveyors, the manner of employing them, and the rate of fee to be levied, are points submitted for consideration and orders.

4. Of the above questions, the first is so far the most urgent that there is a large number of persons who are waiting in suspense for the further Orders and Regulations of the government to settle the condition of their properties. These parties may be divided into three classes,—

First. Those in possession of ancient tenures, which they have claimed to hold free or upon favoured terms, but the decision of the Commissioner has passed against them, leaving them at the mercy of government as to the terms in which they are to retain possession.

Second. Persons who have been allowed to settle and clear land upon an understanding with the government officers that they are to pay such rent as may be settled by government for persons of their class.

Third. Persons who have occupied lands unknown to the government officers, and who are discovered, upon information or otherwise, to have cleared and to be in possession of valuable spots.

5. The scheme of land assessment laid down in the instructions furnished to Mr. Young contained no provision for the cases of any of these. Unconditional ejectment would, however, be a hard measure to be dealt out to any of them; and as the government only desires rent, and not the occupation of the land for other purposes than those to which it is turned by the occupants, it is clearly its interest, as it must be its inclination and wish, not to disturb possession, provided a proper rent is accepted and paid.

6. To all of these parties, therefore, even to the unlicensed and secret squatter, terms must be offered before any process of ejectment is served, and the following may be the principle of the rules established:

7. To an ancient occupant whose claim to exemption from rent, or to favoured terms, has been negatived by the decision of adequate authority, a lease at the maximum rate of three rupees per acre for all the land occupied, with arrears from the date of decree.

8. The lease to be for 30 years, *quasi* in renewal, on the terms in which a new settler might claim after clearing under a first lease of 20 years.

9. To a settler of more recent date, under expressed or implied liability to the terms to be settled by government, the rate of rent that would have been demandable if the settlement had been originally made under a lease on the terms authorised by the government, that is, with the rate of rent now assessable under those terms. In both these cases the arrears of rent for the period of past occupation may be remitted under the condition of prompt attendance to take out a renewed lease, and the subjection of the tenure to a competition bid for assessment of the rent value may be excused, out of consideration for the permissive occupancy.

10. To unlicensed squatters, the terms to be tendered should be regulated by the full-rent value at the time of discovery; and this value need not be restricted to the rates set down in the instructions to Mr. Young, but may be assessed in such manner as the governor of the settlements may deem most fair and equitable. If refused the unlicensed occupant may be required to quit, and the lease may be granted for 20 years to any one willing to take on the best terms that can be obtained. In these cases, the Governor-general in Council would not demand from occupants any rent for years prior to that of discovery and service of the demand, in the form and manner prescribed.

11. It will be necessary, in settling the terms of all leases of the above description with occupants, that the land possessed or claimed should be measured and mapped, and the boundaries defined accurately in the leases, for the difficulties assumed to preclude survey at the time of granting a lease for first clearance cannot have existence in respect to tenures of either of the above descriptions.

12. The next point submitted by the government of the Straits settlements refers to the terms on which clearance leases are to be granted to fresh applicants; and this opens the great question, whether to persevere in the system of temporary leases as the exclusive method in which to give out the land for clearance. In the instructions to Mr. W. Young, this system was specifically enjoined; and by Section 4 of the Act recently passed, the collector is prohibited from granting clearance leases on any other terms. Until, therefore, the law should be altered, there

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there can be no discretionary power given to exceed this period in respect to leases for such purposes.

13. Mr. Bonham, however, strongly urges the expediency of granting leases for 99 years for all land at Singapore for which the maximum rent of five rupees per acre can be obtained. He points out, that under the authority given to him to dispose of land within the town of Singapore on these terms for the long period, a sum of 17,841 rupees has been realised in fines upon leases granted for 37 acres only, at an annual rent of *Rs.* 1,838. 14. 9. There are many valuable spots adjacent to the town that would be taken on similar terms for garden or building purposes, were he permitted to grant the extended lease, and so secure the title for a period sufficient to warrant an outlay of capital upon intended speculations.

14. There is no doubt that there is a strong feeling in the population of the Straits settlements against the system of temporary leases, even though declared renewable; the local authorities have protested against it, and Mr. Young, the officer specially deputed by the government of India to investigate the condition of things, and carry out the system, if possible, has returned with a conviction of its inaptitude to the localities of those settlements, and has strongly urged the inexpediency of endeavouring to force the non-alienation principle under every possible discouragement, against authority, against experience, and against every reasonable hope of success.

15. Mr. Young has pronounced the failure of the experiment to be already apparent, in the unwillingness of speculators to take clearance leases on the limited terms proposed.

16. The dense primeval jungle of these tropical regions requires a capital for clearance that would not be repaid by the uncertain return of a short period of lease, and settlements must be gradually formed and extended, with a labour and perseverance, which an assured and perpetual property in the soil so made productive can alone repay.

17. The inclination of the government of India has always been in favour of very extended leases for the promotion of clearance and the cultivation of valuable productions; and the Governor-general in Council, if permitted by the instructions of the Honourable Court of Directors, would be well disposed not only to permit leases for 99 years of land adjacent to the town of Singapore, but, under the condition of an auction, to secure the present value of any lands applied for, to grant a lease for that period to any intending settler, adopting the terms upon which land is disposed of at the settlements of the Crown in Australia and North America, which are the result of long experience and deep consideration of the subject.

18. The Governor-general in Council having been restrained hitherto by the positive and often repeated injunction of the Honourable Court of Directors against the grant of any lease for clearance that shall extend beyond the limited period already allowed, viz., 20 years, renewable for a further period of 30, does not think he would be warranted in deviating from that system, without a further special reference for sanction. Pending this reference, therefore, the terms for settlers must be those of the paragraphs of the instructions to Mr. Young, already cited, with the modifications proprosed in para. 142 of that gentleman's letter, dated 27th September 1838, so far as these can be acted upon consistently with the law recently passed. Mr. Young's suggestions were offered in the following words: "If, however, contrary to my earnest hopes and recommendations, it should be resolved to persevere in the leasing system, the difficulties of which have been fully detailed, the only suggestions in the way of amendment of the plan now in force which I can offer, are, 1st. That the leases be granted unconditionally for 50 years, leaving the lessees altogether unrestricted in regard to the nature of their cultivation, the amount of their outlay, or other circumstances connected with their undertakings. 2d. That the period of exemption from payment of the rent be limited to two years; that from the second to the fifth year the rent be at the rate of four annas per acre; that from the fifth to the tenth year the rent be at the rate of eight annas per acre; and that from the 10th to the 20th year the rate be one rupee per acre; and that from the 20th to the 50th year the rate be three rupees per acre. The certainty of obtaining a lease for the extended period of 50 years under any circumstances, would, I think, reconcile the lessee to the abridgement of the rent-free period now allowed (the great liability of which to abuse must, I think, be obvious to government), and the reduction of the fixed rent for the renewed term from the present proposed rate of five rupees to three rupees would, I conceive,

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obviate objection to the suggested modification of the intermediate rates, which I think, as modified, are by no means unreasonably high. The rate of five rupees per acre contemplated in the 269th paragraph of the Governor-general's Minute as an equitable rent to be taken for the whole term of the renewed lease, seemed to me, as advised on my first arrival in the Straits, to be not excessive, but subsequent inquiry and observation have led me to the conclusion that it is greatly too high for a general average. Captain Low, in his 'Dissertation on Penang and Province Wellesley,' page 269, estimates the rent of good rice land at four dollars per orlong; but I have met with no practical man in the Straits who does not consider this a most exaggerated estimate. Indeed Captain Low himself has informed me, that since the above statement was written rice has fallen to about half its former value, and that consequently four rupees would now express the rent per orlong of good rice land. He adds, 'I do not apprehend that government will ever be able to obtain this even as an average rent, which last I incline to think will range from two to three rupees per orlong for rice land.' I am therefore decidedly of opinion that the highest rate of rent taken during the currency of the lease should not exceed three rupees per acre. Some cultivation, such as spices, would no doubt, if prosperous, be capable of bearing a much higher rent than three rupees per acre. But it appears to me to be indispensable that the rates to be paid throughout the entire period of the lease should be clearly defined in the outset, and, for the reasons I have stated, being most averse from the drawing of any distinctions between different sorts of cultivation, I think that the average rate cannot be taken higher than that proposed by me. On this point, and on that referred to in the 131st paragraph of this report, I take the liberty of submitting a copy of a letter addressed by me to the resident councillors at the three stations."

19. Consistently with these recommendations, the rent for future clearance leases may be adjusted as follows, in modification of the terms above cited from the government instructions to Mr. Young of May 1837; viz. rent free for two years; from the second to the fifth year, at four annas per acre; from the fifth to the tenth year, eight annas per acre; from the tenth to the twentieth year, one rupee, and the occupant on these terms to have the option of renewal for 30 years after the close of the 20 years' lease, whatever may be the purposes to which the land is appropriated, on payment of rent for the additional period at the rate of three rupees per acre.

20. With reference to the questions specifically put by Mr. Bonham, in respect to lands stated to be well adapted for gardens or for building, and for which a rent of five rupees may, he conceives, be obtained, with, perhaps, a fine, under the condition of lease for 99 years, the Governor-general in Council is clearly of opinion that the limited lease principle is not adapted and was not intended by the Honourable Court of Directors to be applied to lands required for buildings, gardens, or valuable works, and speculations of any kind. His Lordship in Council is therefore prepared to sanction the local governor's being vested with a wide discretion in the extension of the rule established for lands within the town of Singapore to any sites required and applied for with a view to such speculations and undertakings, and for which a maximum rent of five rupees may be offered. This officer may likewise be vested with a discretionary power to fix the terms of any temporary leases applied for under the general rule established for clearance tenures, at rates not less than those above referred to, so as to realise to government the profit that may be obtainable from advantages of soil and position.

21. The Governor-general in Council is convinced that the safest and most advantageous method of realising for the government the value of such advantages is, by an auction sale of the land selected, assessed with the moderate rent prescribed generally for all land, according to the system of Her Majesty's Australian colonies; but such a system being based on a more permanent alienation than is now permitted, must be suspended until the result of the proposed reference to the Honourable Court; and in the interim the attempt may be made to obtain the equivalent for such advantages in an enhanced rent for the period of the lease, as proposed by Mr. Bonham.

22. With respect to the question whether, in case of the renewal of expired leases of 20 years for the further period of 30, the rent for the extended time is to be freshly assessed, at a maximum rate, according to the value and productiveness of the land, the Governor-general is of opinion that this would not be consistent with the intention of the government in the grant of the renewal, for the renewed

lease

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lease would be no boon unless upon assurance of a rate of rent that would leave to proprietors the benefit of any extra expenditure made under the expectation of so reaping its return. The rent for the further period must be settled, in the case of clearance leases taken for 20 years, under previous instructions, without the privilege of renewal specially conditioned, as now authorised, at a small advance upon the rent of the last period of the expired lease, viz. at three rupees per acre, the same rate as fixed for future leases. The Governor-general in Council understands that this point having been raised while the Commissioner was in the Straits, was so settled by Mr. Young, and notified to the parties interested.

23. The rate above specified, viz. three rupees, is thus to be regarded as the maximum rent to be demanded from those who have taken leases under the terms laid down in the instructions to Mr. Young, for 20 years, or who may take them prospectively upon the modified terms proposed by that gentlemen, and above sanctioned, for future leases. The local officers may, however, be vested with a discretion to extend leases on terms of rent less than this maximum rate, but not less than the rent of the last period of the expired lease, if, from local circumstances, there should be reason to believe that the land will not bear an increase to the maximum rate.

24. The provisions of Act XVI., for enforcing the assessment and for the levy of rent due upon tenures, are sufficiently full and specific to render it unnecessary to add any rules or instructions upon that part of the subject; but since, consequently upon the recall of Mr. Young, there is no Commissioner now in the Eastern settlements competent to decide upon the validity of claims to free or favoured tenures, the Governor-general in Council deems it indispensable to declare and appoint the governor for the time being of Singapore, Malacca, and Prince of Wales' Island, to be a Commissioner for that purpose, under the provisions of Act X. 1837, and to vest him with the powers in that Act specified, in addition to and separately from the powers and authorities attaching to and inherent in the situation of governor of the said settlements.

25. For the proper performance of the duties of the Commissioner, it will be necessary that means should be provided of executing surveys, as prescribed in the Act last cited; and for assessing the rent leviable on tenures that may be adjudged liable, or that may be discovered in unlicensed occupancy, a similar establishment will be required, besides that for the issue of new leases, it will be indispensable to procure that the locality shall be surveyed as far as may be found practicable, and the landmarks stated in the application should be examined and verified. For these duties the Governor-general in Council is prepared to sanction the entertainment of a surveyor, with a suitable establishment, at Singapore and Prince of Wales' Island, at a charge for each settlement not exceeding 300 rupees, the appointments to be made by the governor of the settlements from any competent persons that may be found at them respectively.

26. It must, however, be perfectly understood that the surveyor has in his own person no power of instituting measurements, and no inquisitorial authority in respect to titles, landmarks, or other incidents of the land tenures; he must be merely the executive officer of the Commissioner and land collector, and his functions must be confined to the measurement and mapping of localities specifically ordered, and to the marking and definement of boundaries specified under instructions issued to him for the purpose, when quantities of ground are to be measured off for separate grants.

27. The question is asked, what will be the proper fee to levy upon each survey? but it does not appear to the Governor-general in Council that any power is reserved of levying the charges of measurement upon the tenants in possession, or upon applicants for fresh grants; indeed, as the survey is for the security of government, and to answer its purposes rather than those of the tenant, it seems to be the natural and proper arrangement, that being made by a government officer, the government should bear the whole expense.

28. With respect to the preparation of forms of lease for future assignments of land to applicants, the Governor-general in Council does not consider that a perfect form, providing for everything, could be prepared at a distance from the settlements; the purposes in view will, he thinks, be best answered by preparing and causing to be printed the terms at present authorised for the grant of leases of 20 years, and by requiring the applications submitted to be in a form corresponding, with words binding the applicant as well to those conditions as to the observance of the forms and provisions of Act XVI. 1839, and engaging to abide the decision of

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the Commissioner appointed under Act X. 1837, in case at any time there should be any doubt or dispute as to the nature or extent of the tenure.

29. The preparation of these forms must be left to the local authorities, subject to the approval and confirmation of the Governor of Bengal.

30. The rules for registration of tenures contained in Act XVI. 1839, are avowedly imperfect, and were passed by the government of India, under a strong representation from the late Commissioner as to the inexpediency of leaving the settlements with an entire intermission of the obligation to register transfers imposed by the laws repealed by Act X. 1837, for the purpose of continuing the former defective rules, pending the consideration of a plan for general registration, if a more perfect system could be devised.

31. The Governor-general in Council concurring entirely in the desire to establish such a system, if practicable, is disposed to view favourably the draft of Act for the purpose which has been framed by Mr. Kerr, the registrar of the Court of Judicature in the Straits. His Lordship in Council thinks that a scheme framed on the principles developed in that draft may be found susceptible of introduction, wholly or in part, and the experience and intimate acquaintance with the state of things existing, and with the frauds requiring to be provided against which that gentleman is known to possess, afford assurance of the adaptation of the scheme to the state of property and circumstances of the settlements.

32. The Governor-general in Council not looking on the existing rules for registration, as contained in the Act passed in 1839, as a complete or final measure, resolves that the Law Commission be consulted upon the subject, and that the draft of Act prepared by Mr. Kerr, together with the reports and letters of the Commissioner bearing on the same subject, be referred to the Law Commission, with a request that the subject may be considered by that body in conjunction with the reform of the judicatories of the Straits, and that the government may be advised as to the expediency of attempting the introduction of a scheme of compulsory registration based upon the principles developed in Mr. Kerr's draft, or on any other more approved principles.

Ordered, that copy of the above resolution be transmitted to the government of Bengal, in reply to the several references above recorded, and that the appointment of the governor of Singapore, Malacca, and Prince of Wales' Island for the time being to be Commissioner, under the provisions of Act X. 1837, be announced in the Gazette.

Ordered, that a copy of the above resolution be also recorded in the Legislative Department.

(True extract.)

(signed) *G. A. Bushby,*
Secretary to the Government of India.

(No. 61.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council, in the General Department, under date the 8th April 1840.

Legis. Cons. 4 May 1840. No. 21.

READ again the resolution, dated the 18th ultimo, on the subject of the lands in the Straits settlements.

Ordered, that the papers referred to in the 32d paragraph of the foregoing resolution be returned to the Legislative Department, from whence the communication directed in that paragraph will be made to the Law Commission.

(True extract.)

(signed) *G. A. Bushby,*
Secretary to the Government of India.

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(No. 267.)

From Secretary to the Government of India to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 4 May 1840. No. 22.

Sir,

I HAVE the honour to transmit to you, to be laid before the Law Commission, the accompanying papers per list, and to express the wish of the Right honourable the Governor-general in Council that the subject of the registry of tenures in the Straits, as suggested by Mr. Kerr, may receive the consideration of the Law Commission, in conjunction with the reform of the judicatures of those settlements, and that they will favour the government with their advice as to the expediency of attempting the introduction of a scheme of compulsory registration, based upon the principles developed in Mr. Kerr's draft, or on any other more approved principles.

Legislative Dept.

2. With the report of the Commissioners you are requested to return the original papers.

I have, &c.

Council Chamber, 29 April 1840.

(signed) *T. H. Maddock*, Secretary to the Government of India.

(No. 17.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to Government of India, Legislative Department.

Legis. Cons. 3 August 1840. No. 2.

Sir,

THE Law Commission having now so far completed their report upon slavery in India as to be released from constant attention to it, think that it may be satisfactory to government to know upon what other subjects they are at present occupied. They therefore direct me to state, for the information of government, that they are preparing reports, viz.

1. Two reports arising out of the petition of the East Indians. The first, upon the substantive law to be applied in the mofussil to that class of persons and other classes, whose legal condition may be considered doubtful. The second, a report upon the judicatures, by which the causes, civil and criminal, of those classes are to be decided, involving the question of the introduction of juries, or some modification of them, into the mofussil.

2. A report upon judicature and procedure in the places subject to the jurisdiction of Her Majesty's courts. This will comprise the report (which has been already announced) upon the courts of requests, that upon the introduction of *vivâ voce* examinations in equity, and that upon the Recorder's Court in the Straits. These three subjects appear to us to form properly so many chapters of a report bearing the title above stated; and we propose, therefore, to treat them in that manner, although in the references which called our attention to them, they were either prescribed separately, or in combinations different from that which seems to us the most methodical and the most convenient.

3. The Law Commissioners have again had under consideration the question of abolishing the provincial courts of appeal and circuit under the presidency of Madras, with reference to the letter from Mr. Officiating Secretary Grant, dated 3d June 1839, and are about to submit a report on the subject.

(No. 224)

4. As connected with the last-mentioned subject, they have resumed the consideration of the question referred to them by Mr. Secretary Macnaghten's letter, dated the 4th July 1836, "of the powers to be confided to single judges of the sudder courts," and will submit their sentiments upon it at an early period. In the meantime they request that the Right honourable the Governor-general in Council will be pleased to communicate to them any reports that may be before government bearing upon the question with reference to the state of business in the Sudder Dewanny and Nizamut Adawluts at Calcutta or Bombay, or elsewhere.

Vide letter of the Law Commission, dated 4 July 1837, No. 41.

His Lordship in Council is aware that the Law Commission had consulted the principal judicial authorities, with a view to ascertain what objections might exist to a law legalizing the re-marriage of Hindu widows. Such law, it was hoped, would tend to diminish the crime of child-murder. The inquiry has produced a discussion on the legality of such re-marriages under the Hindu law and usage in some places.

The Law Commissioners are preparing a short report, showing the result of their inquiries.

I have, &c.

(signed) *J. C. C. Sutherland,*
Secretary.

Indian Law Commission,
11 July 1840.

(No. 339.)

Legis. Cons. 3 August 1840. No. 3.

From Junior Secretary to the Government of India to *J. C. C. Sutherland,* Esq. Secretary to the Indian Law Commission.

Sir,

Legislative Dept.

I AM directed by the Right honourable the Governor-general in Council to acknowledge the receipt of your letter (No. 17), dated the 11th ultimo, and in reply, to state that his Lordship in Council will look with interest for reports from the Commission upon the subjects now before them.

2. It is very desirable that the Commission should speedily place the government in possession of their views upon those amendments in the law of procedure, which must take a prominent part in all extensive legal reforms; and it is obvious that much of what is noticed in your first section, and the whole of the subjects of the third and fourth, are but portions of the code of procedure, and therefore belong to that class of questions which, in his Lordship's opinion, require your earliest attention.

3. Upon the understanding that the report alluded to under your second head will be furnished at no distant date, his Lordship in Council approves the combination of subjects proposed by the Commission. But I am desired to observe, that the subjects which it is intended to combine in one report, are each, in his Lordship's estimation, of sufficient urgency and importance to require separate and distinct consideration, while the time which has already elapsed since they were first proposed to the Commission, especially in the case of the Court of Requests, and the great necessity which has long been felt for the improvement and extension of that court, render it very desirable that the propositions of the Commissioners should be matured, and laid before government with as little further delay as may be possible. Should it then be found that the plan of combining these or any other portions of the code of procedure in one general report, or in one or more comprehensive chapters of a general report, is likely to occasion such delay as to prevent the receipt of the report by government before the termination of the present year (1840), his Lordship would decidedly prefer to receive reports on each subject separately; and, in that case, would suggest to the Commission the state of the Court of Requests as the first subject for their consideration.

4. Reference has been made, as recommended by the Commission, for information as to the state of business in the Sudder Dewanny and Nizamut Adawluts at the presidency, and the result of the reference will be made known to the Commission without loss of time. In the meantime, the half-yearly report, from the 1st January to the 30th June 1839, received from the presidency of Bombay is forwarded herewith.

I have, &c.

(signed) *F. J. Halliday,*
Junior Secretary to the Government of India.

Council Chamber,
3 August 1840.

No. 2.
Abolishing the Recorder's Court in the Straits.

(No. 151.)

From Secretary to the Government of India to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 22 Nov. 1841. No. 8. Legislative Dept.

Sir,

I AM directed by the Right honourable the Governor-general in Council to call attention to my letter, No. 207, of the 29th April 1840, and to request that the report on the reform of the judicatories in the Straits' settlements therein required, may be furnished at the earliest convenience of the Commissioners.

2. I am also directed to remind the Commission, that their report containing reasons for the provisions of the draft Act for establishing a court of subordinate civil jurisdiction at the presidency, promised in your letter of the 31st July last, has not been as yet received, and to request that its transmission be expedited.

I have, &c.

Council Chamber, 22 Nov. 1841.

(signed) *T. H. Maddock*, Secretary to the Government of India.

To the Right honourable the Earl of *Auckland*, G.C.B. Governor-General of India in Council.

Legis. Cons. 22 April 1842. No. 18.

1. WE have the honour to submit a report upon the question of abolishing the Recorder's Court in the Straits, which was referred to the Law Commission by the government of India, under date the 16th September 1837, in conformity to instructions from the Honourable the Court of Directors, dated 19th February 1837. Report on the Judicial Establishment in the Straits.

2. Of the voluminous papers forwarded to us for the purpose of forming an opinion upon the subject, a very large proportion is occupied with questions connected with the general administration of the Straits settlements, which, as not having reference to the judicial establishment, we do not feel ourselves called upon to discuss particularly.

3. The question of a reform of the system of judicature in the Straits, which has been especially referred to us for report, has been treated in the papers before us in connexion with that of an alteration of the law prevailing at these settlements. Reform two-fold.

4. It has been judicially decided that the law of England is the *lex loci*, to which the inhabitants of all classes are subject; that is to say, so much of it as is applicable to their various circumstances. Law of England the *lex loci*.

5. We concur with the late Sir Benjamin Malkin and the Governor-general in thinking that it ought not to be changed substantially, but modified by express enactment, in the spirit in which Sir Benjamin Malkin thought it should be administered, under a large and liberal regard to the different manners, usages, and religions of the various nations of which the population is composed.

6. Without some modification it would be unsuitable to the condition and circumstances even of the English settler; and one extensive and very beneficial change on a most material point as regards them, has already been effected by the new law enacted by Act XX. of 1837, whereby all landed property in the Straits settlements is declared to be, for certain purposes, of the nature of chattels real; therein adopting the principles of Act IX. of the same year, framed, on the recommendation of the Law Commission, for relieving the parsees from the difficulties they suffered from a similar cause *. As regards the rest of the population of these settlements, considering that they are, and long have been, under English law, and looking to the character of the population, we are of opinion that the principles stated in our report upon the *lex loci* of British India may with propriety be applied to them, and that no greater modification in the law of England than would With certain modifications.

* The scope of this Act, we may observe, has been somewhat misapprehended, since it applies only to the transmission of immoveable property upon death and intestacy of the possessors or person having a beneficial interest in the same.

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would be effected by giving operation to the rules laid down in the draft Act founded upon that report need be contemplated at present.

7. We proceed to the investigation of the main subject, viz. the machinery by which the law is now administered, and to state the nature of the alterations we are inclined to recommend in the constitution of the courts; and it is gratifying to us to be able to show, that in framing these changes we have also provided for the very large reduction of 95,000 rupees per annum in the judicial expenditure of the Straits settlement.

Present system.

8. The present system is that of a chartered court, partly ambulatory and partly stationary in its functions; composed of a recorder, being an English barrister of not less than five years' standing, and appointed from home under a commission from the Crown, assisted by the governor of the three settlements of Singapore, Penang, and Malacca, and the resident councillor of that one of the three settlements at which the court may for the time be sitting.

9. The court, it appears, may be held by one of them sitting alone, it being provided, however, that no court shall be held without the recorder, if resident within the settlement, unless under the express authority of the governor, or the councillor acting as such.

10. Doubts were at one time raised as to the legality of holding a court at any one of the settlements without the presence of the recorder, but it seems that they were overruled by Sir Benjamin Malkin, the recorder, as we find from his letter of the 16th September 1837, paragraphs 44 and 45.

Expense its chief defect.

11. The most weighty objection that we find urged against a court constituted on this plan is, that it is maintained at an expense quite incommensurate with the population and resources of the settlements over which it is placed.

12. It has further been urged, that the enforcement of the strict letter of the English law, which a court with an English barrister in it feels itself obliged to uphold, is entirely unsuited to the habits of the people for whose benefit it is intended.

13. This latter objection, however, is, by those who offer it, restricted to the civil branch of the court's functions, and has been successfully refuted by the observations of Sir Benjamin Malkin, with which the Governor-general fully concurred; at any rate it is an objection to the law rather than to the constitution of the court, and we shall waive its consideration in this place.

Plans for reform.

14. Various plans have been suggested by the local authorities and the government of India, for reducing the expense of the judicial establishment within limits more suited to the state of the finances. The chief feature in all is, the dispensing with the professional judge as a permanent member of the Straits court; and the great difficulty with all has been, the means of supplying his presence in a court where causes involving points of English and international law frequently arise.

Mr. Governor Fullerton's plan.

15. The first, in point of date, was framed in 1829 by Mr. Fullerton, then governor of those settlements, who proposed making the resident councillor at each settlement the judge and magistrate within it, for the trial of all civil suits above 500 rupees in amount, and all criminal cases not involving more than two years' imprisonment with hard labour, 30 stripes, or fine of 200 rupees, with power to commit all higher cases to the court of circuit and appeal; to the latter tribunal, appeals to lie in civil decisions above 2,000 rupees, and an appeal, in cases of 3,000 rupees and upwards, to the Privy Council: the assistant resident to try all suits up to 500 rupees, and to take up all magisterial cases referred to him. The governor of the settlements to perform each circuit, to hold a court of circuit and appeal for the settlement of all cases, civil and criminal, referred under the above rules. British-born subjects were to be amenable to these local courts, but with leave to appeal to the Supreme Court at Calcutta, instead of to the Governor on circuit. Parties deeming themselves aggrieved by government were to apply to the government of India, or appeal to the Supreme Court at Calcutta. The process of these courts to be very simple in all its stages; and in cases of importance, particularly in commercial cases, a jury of four or seven to be assembled.

16. Anticipating that objection might be raised to a plan which provided courts composed only of civil servants, Mr. Fullerton proposed another, whereby five

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five merchants should act as assessors, or as aldermen in a mayor's court, the resident being mayor, the governor and council holding sessions of oyer and terminer, with a petit jury, on informations to be drawn up from the magistrate's proceedings by the registrar, but divested, as well as the proceedings, of all technicalities.

Lord Auckland's plan.

17. The Governor-general, Lord Auckland, in the very full Minute which he recorded on this important question, suggested the following plan:

(441.) "To have one paid magistrate, and an assistant magistrate, at each settlement, who shall also have charge of their revenues; both to be justices of the peace, and both to have, consequently, the power of commitment, but the assistant to be generally under the orders of the magistrate, who should have power to review the assistant's orders; to empower them both to punish for slight misdemeanors, petty thefts, &c., and to empower the magistrate to try small felonies by a jury of five, and to sentence persons thereby convicted to one year's imprisonment with hard labour; to make all the orders of the magistrate and his assistant appealable to the resident of the three settlements, who should be able to remit sentences, but not to interfere with verdicts.

(442.) "To direct the governor of Bengal to make natives, or others, justices of the peace in the interior, where necessary.

(443.) "To make the magistrate and his assistant commissioners of a court of requests, to sit one at a time, as may be convenient; and to increase largely the jurisdiction of the court of requests, which now does not go beyond debts to the amount of 32 dollars.*

(444.) "To have one resident for the three settlements, who, besides hearing appeals from the magistrate, shall be a civil and criminal judge, holding his court at each settlement alternately, with power to summon juries to try appeals from the court of requests, and to try all original civil cases, with or without a jury of five, according to the desire of the parties, giving either party a right to require a jury; and with power to try all criminal cases with a jury of five, except only in cases wherein a British-born subject shall be accused of a crime for which, if found guilty, he would be liable to suffer death; to empower the resident, as judge, to postpone or adjourn the trial of any case, civil or criminal, for the arrival of His Majesty's judge in circuit.

(445.) "To empower the resident, as judge, to pass judgment in civil cases, and if not appealed from, at his discretion either to execute it or to grant a new trial, and either to postpone sentence in criminal cases for the arrival of His Majesty's judge, or to pass it according to law, and to authorise or postpone execution thereof at his discretion, excepting only in capital cases, in which judgment shall not be executed until a report of the trial shall have been submitted to His Majesty's judge on circuit, or to one of the judge's of His Majesty's court in Calcutta, and the sentence approved and confirmed by him.

(446.) "To obtain the gracious pleasure of His Majesty to the proceeding of one of His Majesty's judges of the Supreme Court in Calcutta to the settlements in the Straits, once a year, or oftener if need be, for the trial, with or without a jury, of all original cases, civil or criminal, that may have been referred to him; for the trial of all appeals, civil and criminal, from the decision of the Commissioner; and for the hearing and passing orders on all petitions. To empower him to call for any proceedings of any local judicial officers, with any statements or explanations he may require, and generally to vest him with the powers of the Court of King's Bench and the Court of Chancery, together with all necessary ecclesiastical and admiralty powers within the settlements. It would apparently be necessary in order to the exercise, in the first instance, of the powers of an admiralty court always on the spot, to solicit that the resident's court be invested with admiralty jurisdiction by His Majesty, if such should be his royal pleasure."

Mr. Governor Murchison's opinion thereon.

18. Mr. Murchison, late governor of these settlements, for whose opinion (when that gentleman was in Calcutta, on his way to England) the above plan was submitted by the Governor-general, thought that the present charter of justice, in respect

* The terms of the charter are somewhat more comprehensive than these words import. They include small debts, and "all suits and causes whatsoever," against any of the inhabitants of the settlements and places subordinate, "wherein the debt, duty, or matter in dispute shall not exceed the value of 32 dollars."

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respect to the law, was well adapted to localities if due regard were had in practice to the clauses, which expressly sanction such a modification of English law as may be required by the manners and customs of our native subjects; and that the chief alteration required was, the substitution of the Malayan language for English in the pleading, the utter exclusion of advocates (at least from the courts where lay judges preside,) and a real observance of the very simple process already enjoined by the charter. In respect to the constitution of the court, he concurred in the opinion that there should be a court of appeal held by a judge entirely independent of the local government, which should be not only a court of appeal generally, but an original court in respect to all matters in which the East India Company have a direct interest. Instead, however, of having recourse to the plan suggested, which, in his opinion, was liable to much risk of failure, (alluding to the state of the Calcutta bench two years before his Minute was written,) he recommended the appointment of an English barrister, to be permanently fixed at Singapore, not to be knighted, or led to expect promotion to other benches. "In this court," he observed, "the process would still be carried on in English, an imperfection certainly, but hardly to be avoided; while the other plan was liable to the same objection, would be more expensive, and much less efficient."

Sir Benjamin Malkin's proposal.

19. A modification of the Governor-general's scheme, as regards the proposed circuit, was offered by Sir Benjamin Malkin after his removal to the Calcutta bench, and not long prior to his lamented decease. His proposal was to attach a fourth judge to the Supreme Court at Calcutta, for the purpose of performing the circuit to the Straits, and likewise of supplying vacancies in the Supreme Courts of Madras and Bombay, which he suggested should be reduced to a single judge at each of those presidencies. The effect of this would be to save to the state the entire expense of one judge of a Supreme Court, and thereby to accomplish the desired saving at the least possible detriment to the administration of justice in the Straits. This plan, as regards the constitution of the Supreme Court, is similar to that proposed by the Finance Committee which sat at Calcutta in 1829 and 1830.

Governor-general's opinion thereon, and modification of former plan.

20. Upon the scheme proposed by Sir Benjamin Malkin, the Governor-general observed, that it had much to recommend it, and was well worthy of the attention of the home authorities; but that it went far beyond the purpose immediately in view, being a scheme for all India, and involving an organic change, the time for the consideration of which had not yet arrived. Upon reflection, it appeared to him that the civil judicial business of the Straits "might be almost entirely provided for by local tribunals, with a power of appeal on points of law to the courts of Calcutta." "The same appeal, or a reference for confirmation, might exist in criminal cases of magnitude." On the whole, he was led "to prefer, even to the annual circuit of a judge from Calcutta or Madras, the best magistracy and the best courts, which, at a moderate expense, could locally administer justice, with regulations for appeal or reference, as above described." His Lordship appears to have had in view an arrangement suggested in Council by Mr. Henry Shakespear,

Mr. Shakespear's plan.

"of allowing an appeal on the record to the Supreme Court at Calcutta from the local courts in all civil cases of magnitude, similar to the appeal from the Supreme Court itself to the Privy Council, while a reference for confirmation of sentence, either to that court or to the government, as in cases of courts-martial, might be made in criminal cases in which the sentence exceeded 14 years' imprisonment; all other cases, beyond the competency of the magistrates to decide, to be disposed of by a quarter sessions and a jury."

Law Commissioner's views.

21. There is much in each of the above plans that is deserving of mature consideration, and something in all, which we feel inclined to recommend for adoption in any scheme that may be finally resolved upon. Each has emanated from, or been modelled in unison with the opinions of persons of high authority; it will, however, be scarcely necessary for us to enter very fully into our reasons for coinciding in such of the views of these authorities as we have followed in our scheme; and it may suffice to state, generally, the points on which we do agree, and the principal grounds of our recommendations.

Think professional judge indispensable.

22. We cannot agree with those who would deprive these settlements, remote as they are from the other English settlements in India, of the constant presence of an English professional judge; and we fully concur in the strong reasons urged by Sir Benjamin Malkin, in the following paragraphs of his letter of the 16th of September 1837, for having one permanently resident there.

(18.) "The

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(18.) "The peculiar importance of having a professional judge in the Straits arises, in my judgment, out of the commercial character of the settlements there, and the resort thither of foreigners of all nations. An erroneous decision on the regularity or irregularity of the presentment of a bill of exchange, or the sufficiency of the notice of its dishonour, would compel a merchant to make payments at Singapore which he ought to be able to recover from the next party to the bill in London, but would not, because there they would require real regularity. This is a case not unlikely to arise. A Company's servant, unconnected with mercantile business, would probably draw his notions of it very much from the practice of the place where he lived. At Singapore this practice is very lax, so much so, that an attempt was once made before me to establish a 'custom' of Singapore to transact ordinary mercantile business in an irregular manner; of course I did not recognise any such custom, or treat men who had received their mercantile education in Great Britain or India as entitled to relieve themselves from the ordinary restraints of the regular conduct of business, by setting up any lax usage of so recent an introduction. Nor (though some of the passages referred to by the Governor-general, in the 407th paragraph, seem to show that judges appointed under more favourable circumstances than they would be, on the projected plan, might be ready enough to dispense with the rules of law in any case where they thought it inexpedient to apply them,) do I suppose that any non-professional judge would have allowed of such a custom claimed expressly as an exception from the ordinary rules of law; but he might very easily fancy that the practice of the place where he lived was the real 'usage and custom' of merchants all over the world, and the consequence might be such as I have already adverted to.

Sir Benjamin Malkin's opinion on that point.

(19.) "This is only an instance, and negotiable instruments are more likely than anything else to furnish such instances, and occasion such inconvenience. But similar difficulties might arise on a variety of other mercantile contracts and securities. The law of insurance, for example, is one of considerable intricacy; and there are agents in the Straits for several insurance companies, and no insurances probably are effected except by them. But, in these cases, the parties really interested will generally be resident at a distance, and will construe their contracts, and estimate their liabilities, according to the ordinary and legal understanding on such subjects.

(20.) "There remains another class of cases of less frequent occurrence, but in which the consequences of an erroneous decision might be yet more important. I refer to those in which international rights might come in question or national interests might be involved. A case occurred just before I left the Straits, and was adjudicated on by my successor, Sir Edward Gambier, in which the salvage of the cargo of an American ship, or rather a claim in the nature of salvage, was the matter of dispute. The circumstances were very peculiar, and it is not necessary to enter into any detail of them; but it was a case full of difficulty, and one which, in the event of any decision decidedly illegal, might, not improbably, have become the subject of controversy on the part, not of any private individual only, but of the American government. The court in the Straits is now about to receive Admiralty jurisdiction—a change most desirable in itself, but which is likely to lead to the more frequent occurrence of questions involving similar considerations, and open to similar consequences."

Mr. W. R. Young's opinion on it.

23. Mr. W. R. Young, the Commissioner lately employed by government to make inquiries into the condition of these settlements, having been examined by us on this point (*vide* Appendix (C.), has also expressed his opinion that, so long as English law obtains, it would not be advisable to entrust the administration of it to unprofessional judges, without some professional check, and has given a strong instance in support of his opinion.

Law Commission propose a professional judge.

24. On the above grounds, we would advocate the continuance of a professional judge as the principal member of the judicial establishment for the settlements in the Straits, as necessary for the satisfactory administration of the laws applicable to civil cases; and we think it advisable, also, with respect to the administration of the criminal law.

25. We are averse, at settlements where capital cases are but too rife, to allowing so long an interval between sentence and execution as would most frequently be necessary under either of the plans for dispensing with the residence of a professional judge, even in cases where there was no room to doubt the correctness of the judgment; and, with respect both to capital and other cases, we think

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think many circumstances may occur to interrupt the regularity of the circuit from this presidency, and thereby to impede the administration of criminal justice at these settlements.

But on a lower salary.

Personal Salary:	
Present - -	40,416
Proposed - -	17,500
Saving - -	22,916

26. Although, for the above reasons, we advocate the continuance of a professional judge in the Straits, we by no means think it necessary to maintain a court constituted like the Recorder's Court under the present charter; and we doubt not that a sufficiently qualified judge may be obtained for a salary less than half of what it was thought proper to assign to one holding the rank of the recorder.

Law Commissioner's plan for a system of courts.

27. We proceed to submit a plan for a system of judicature, to be substituted for that established by the charter, which we think is calculated to work more efficiently for the ends of justice, while it will be greatly more economical, and in which we have endeavoured to uphold the important principle of judicial independence by placing at the head of the establishment a judge unconnected with the executive administration of government; although, from the necessity arising from the poverty of the settlements, we are obliged to give subordinate judicial functions to the local executive officers.

Courts of non-professional judges.

28. The employments of tribunals, superintended by non-professional judges in settlements where the English law is the *lex loci*, may appear inconsistent with the views we have expressed; but having provided a professional judge for the higher class of cases, involving points of international and commercial law, we think the sufficiency and propriety of the other part of the proposed system may be rested on the observations of Sir Benjamin Malkin, who, in the 16th and 17th paragraphs of his letter of the 16th September 1837, states, that "in much the largest proportion of the cases arising in the Straits, it is not a question of the law of England, or any other law; it is the law of all countries alike, that a man who receives goods which he has bought shall pay for their price, and that the seller, who has received the price, shall deliver the goods; that a borrower shall repay the loan; and that a person who injures another's property shall make good the damage. The bulk of the business of the court in the Straits consists in enforcing these rights; and this may be sufficiently done by any person of sound sense, and discriminating understanding." He adds, that "though the habits of a particular profession may give some degree of peculiar facility or unfitness (for both are occasionally imputed) for judging of evidence, the mere local transactions of the Straits are generally of the character above mentioned, and this, just as much with respect to Europeans as to others."

29. The land cases in Penang, which Sir Benjamin Malkin notices as involving difficulties, have probably been in some measure simplified by the provisions of Act XX. of 1837.

Population.

30. The population of these settlements generally is of a very mixed character; consisting, for the most part, of Malays, Chinese, and natives of the Archipelago, whose litigation will be commonly about matters to be governed by their own usages. This population, except at the chief town of each settlement, is thinly scattered over the face of the country, particularly in "Province Wellesley," subordinate to Penang, and in Nanning, under Malacca. The Statement (B.) appended to this Report, will show the nature and distribution of the people, as far as our information extends, and will, we hope, satisfy government, that, for such a population, very simple tribunals will suffice.

Singapore to be the station of the chief court.

31. Viewing Singapore as the settlement best adapted, from its commercial character, and large European population, for the Straits presidency, we propose to establish at it a court constituted, as nearly as circumstances will admit, upon the same plan as the subordinate civil court which we have recommended to be established at this presidency, to be composed of a lawyer of the English, Irish, or Scotch bar, of not less than five years' standing, the resident councillor, and his assistant; and at Penang and Malacca respectively a similar court, composed ordinarily of the resident councillor and his assistant, aided by the professional judge during the periods of his visitation on his circuit.

Circuit by professional judge. *Vide* Governor-general's Minute, para. 453.

32. We think that this circuit should be made three times in the year to each of the subordinate settlements, Penang and Malacca; but the presence of a steamer will admit of this being done without any loss of time to the public, and perhaps without

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without much additional charge to the State, as the vessel will be only performing the ordinary duty for which it is kept up.

Distribution of civil business.

33. Following the plan laid down for the subordinate civil courts at the presidencies, we intend that all cases obviously involving points of English or international law should be reserved for the professional judge, and the rest distributed between the lay judges (the resident councillor and his assistant), excepting cases in which government is concerned, which we would advise to be reserved also for the professional judge, as well as all cases of 10,000 rupees and upwards, for reasons hereafter given in paragraph 43.

At Singapore.

34. At Singapore, where the professional judge will be stationed, except during the periods of his visits to Penang and Malacca, we think that the distribution of cases should ordinarily be performed by himself, the lay judge next to him being authorised to perform it in his absence.

At Penang and Malacca.

35. At Penang and Malacca, this duty must ordinarily be performed by the superior lay judge, and it does not appear advisable to interrupt this course of proceeding during the short visits of the professional judge.

Professional judge's court.

36. While at Singapore, the professional judge should take up the civil suits reserved for him, as they are instituted, and proceed with the trial of them in due course. Those reserved for him at the other settlements he should take up, and dispose of, during his visits ; but the superior local judge should have authority to take the evidence of witnesses who are about to leave the jurisdiction intermediately, and generally to take all steps which cannot be delayed without risk of injustice.

Local court in province Wellesley.

37. For "Province Wellesley," on the mainland, separated as it is from the settlement of Penang by an arm of the sea, it will be necessary to make a special provision, authorising the assistant in charge to receive, and try on the spot, all such suits as are usually referred to the assistant on the island, and to remit all others to the superior lay judge, to be disposed of by him, or reserved for the professional judge.*

Appeals.

38. From the decisions of the assistant a regular appeal should lie to the superior lay judge of each settlement, to be determined by himself, or reserved for the professional judge when the appeal is made upon points of law. From the decisions of the superior lay judge, in original cases, a regular appeal should lie to the professional judge ; and from the decisions of the professional judge, in original cases, there should lie a regular appeal to the College of Justice at Calcutta.

Special appeals.

39. Special appeals from the decisions of the professional judge in cases tried and decided originally by the superior and subordinate lay judges, and from the decisions of the superior lay judge in cases tried and decided originally by the subordinate, should lie to the college of justice, upon the grounds specified in the draft regarding special appeals, which we had the honour to submit under date the 4th December 1841.

40. Upon the principle advocated in our report of that date, that all special appeals, being confined to the questions therein described, should be determined only by the highest court, we propose, as above, that there shall be a special appeal to the College of Justice at Calcutta from the decisions of the superior lay judges, as well as from the decisions of the professional judge in appeal cases : but, under the rule that appeals from the decisions of the subordinate lay judges which turn upon points of law shall be reserved for the professional judge, we apprehend that there will be few decisions passed by the superior lay judges in which there will be admissible grounds for a special appeal, and such as there are will be cases involving questions touching usage, and the practice of the courts.

41. In the draft Act referred to we provided that petitions of special appeals should be preferred directly to the College of Justice ; but, considering the local circumstances of these settlements, we think that the petition of appeal might, at the option

* We gather from Captain Low's Dissertation on the Soil and Agriculture of the British Settlement of Penang, including "Province Wellesley," 1836, p. 237, that the inhabitants of the latter are frequently deterred from seeking justice by the inconvenience and risk attending a resort to the court on that island.

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option of the appellant, be presented to the court whose decision is objected to, to be forwarded by that court to the College of Justice, and that if the special appeal be admitted, the respondent might be allowed also to deliver his answer thereto to the lower court.

Special powers of professional judge.

42. We think that the professional judge should have power to call up to his court any cases, original or appealed, which, from representations made to him, he considers to be proper subjects for adjudication by himself, as involving questions of law.

Appeals to Privy Council.

43. With reference to the jurisdiction of Her Majesty's Privy Council, we would provide that all cases where the sum litigated amounts to 10,000 rupees and upwards, should be decided by the professional judge; that a regular appeal should lie from his decision thereon to the College of Justice, and from thence, in due course of law, to the Privy Council.

Criminal courts.

44. With respect to criminal judicature, we propose that justice shall be administered according to the existing penal law, by three courts at each settlement, of which two (one held by the resident councillor, or superior lay judge of the settlement, and the other by the assistant) shall be open continually; and the highest, under the professional judge, shall be held at intervals.

Jurisdiction of professional judge.

45. We propose that the jurisdiction of the highest court, under the professional judge, shall embrace all cases in which the crime charged is punishable by death, or imprisonment for life or for 14 years, or by transportation for any term; that

And local judges.

the court under the superior lay judge shall take cognizance of all cases below the jurisdiction of the professional judge, in which the crime or offence may be of a nature to warrant a sentence exceeding six months' ordinary imprisonment and a fine of 200 rupees; and that the court of the assistant shall take cognisance of all cases of less magnitude. We propose that the assistant shall also be the local magistrate and superintendent of police, and that in the capacity of magistrate he shall make a preliminary investigation into cases beyond his own jurisdiction, and shall commit offenders, or hold them to bail for trial before the superior lay judge, and the professional judge respectively, according to their jurisdiction.

Criminal procedure.

46. We propose that the professional judge, in all cases not capital, and the superior lay judge in all cases, shall proceed in the manner laid down in sections 2 to 4 of the draft Act submitted to government with the report of the Law Commission, under date the 31st August 1838; to which we beg leave to refer for the reasons upon which we recommend that they shall be assisted by assessors instead of by a jury, and that the intervention of a grand jury shall be dispensed with. In the trial of capital cases we do not think it advisable at present to dispense with a jury; but if there is a difficulty in obtaining the attendance of 12 sufficient jurors, we would suggest that the number be reduced; and we would not insist upon their verdict being unanimous.

47. We further propose, that if it shall appear to the superior lay judge, after he has completed a trial and found the prisoner guilty, that the sentence he is empowered to pass is inadequate to the crime proved, or that a doubtful point of law is involved, it shall be competent to him to refer the case for the sentence of the professional judge.

Appeals in criminal cases.

48. We propose that, according to the principle of the late Act, No. XXXI. of 1841, there shall be permitted one appeal from every sentence or order passed in a criminal trial by the assistant, to the superior lay judge; to be decided by himself, or reserved for the decision of the professional judge if it involve a doubtful point of law. As we intend that the trials before the superior lay judge and the professional judge respectively, shall be conducted with the aid of assessors, except in capital cases, in which the decision will rest with a jury, we do not think it necessary to allow an appeal except as proposed in the draft Act (31st August 1838, section 2) for the subordinate criminal court in Calcutta, when a conviction is challenged as wrong in point of law, or when it is contrary to the opinion of one or more of the assessors. In such cases, we think an appeal should be permitted from the superior lay judge to the professional judge, and from the professional judge to the College of Justice in Calcutta, and that the appeal court should have authority to pass orders thereon, agreeably to the provisions of section 11 of the said draft, affirming or annulling the decision, or granting

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granting or refusing a new trial of the whole or any part of the case, or granting or refusing an order to the lower court to reconsider the finding and sentence. In capital cases, tried by a jury, we do not think it necessary to make any provision for an appeal, otherwise than at the discretion of the judge, according to the provisions of the existing charter: we would allow an appeal upon the principles of those provisions to the College of Justice.

Special powers of professional judge and of the College of Justice. *See* Sect. 6 of Act No. XXXI. of 1841.

49. We further propose, that the professional judge shall have power to call for the record of any criminal trial in any subordinate court, and to pass such orders upon it as may seem fit, and that the College of Justice shall have power likewise to call for the record of any trial held by the professional judge, and to pass orders upon it, provided that in no case shall the sentence passed by the lower court be enhanced, or sentence passed on any person acquitted by the lower court.

Reasons for abolishing quarter sessions.

50. We beg to refer again to the report of the Law Commission, under date the 31st August 1838, (paragraphs 18 to 25,) for the reasons which have induced us, in our scheme for the administration of criminal justice, to dispense with a tribunal constituted on the plan of an English court of quarter sessions, and to vest the jurisdiction which it has been proposed to commit to such a tribunal, in single judges, in the manner here proposed.

Powers of the local judges.

51. The powers we assign to the superior lay judge, it will be observed, exceed what was intended to be given to the judge of the Calcutta subordinate criminal court; but are rather less than are exercised by session judges under this presidency. We think it necessary that the judge should have the jurisdiction we recommend, because of the periodical adjournments of the court of the professional judge, which would render it inconvenient to reserve for his cognizance any cases but those which we have indicated. The power we assign to the assistant, it will be observed, is the same as is specially exercised by assistants to the magistrates in this presidency, under Clause 3, Section 2, Regulation III. 1821.

52. We consider that the general power of supervision proposed to be given to the professional judge, and the provisions for appeal we have suggested, will be a sufficient check upon the subordinate judges, while the facilities which our plan will afford for consultation and reference between the inferior and superior functionaries, will tend greatly to prevent errors.

Civil procedure.

53. The civil procedure should generally be that of the proposed subordinate court at this presidency, to our report on which we have already drawn attention; and the procedure which was described by the late Sir Benjamin Malkin, as adopted by him under the charter established for Her Majesty's courts in the Straits, as stated in paragraph 11 of his letter of the 16th September 1837, must have prepared the suitors for rules of pleading and evidence, having no other object than the discovery of truth and the decision of every case on its merits.

"With respect," says Sir Benjamin Malkin, "to the statements made as to the civil procedure of the court, I need only refer to the 423d paragraph of the Governor-general's Minute, to show that the fault, if it exist, arises, not from the provisions of the charter, but from the manner in which the charter has been administered by the judges. How this has been done by others than myself, whether they be lay or professional judges, I cannot say; but my own recollection of the practice of the court, in a very large proportion of the cases brought before it, is very different from the accounts given of it. I refer especially to those cases, a very large proportion of the whole, in which no professional assistance was employed, but the complainant came immediately to the court with his statement of alleged grievances. In many of these cases, where he had no claim to redress, even on his own showing, this was explained to him at the instant, and his claim was quieted without the actual institution of any suit, or the incurring of any expense. In many others, where he appeared to have a claim of such a nature as to admit of an easy adjustment with the opposite party, the defendant was desired, without the issuing of any regular process or institution of any regular suit, to attend with the plaintiff on an early day, and the case was very frequently arranged without difficulty or expense, on hearing the statements and admissions of each party. It was only where it was clear, in the first instance, that there must be a disputed question, to be settled by evidence, or where these attempts at a preliminary and amicable adjustment failed, or where the nature of the arrangement was such that it required some act of the court to authenticate and

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and secure it, that any formal proceedings were adopted in these cases; and even then they were of the simplest description; the parties going to the registrar's office, and having their own statement of facts on each side taken down, with the rejection of all the immaterial circumstances with which the party's own petition never failed to abound, and receiving information what were the points really asserted and denied, and the matters which it was necessary to support by evidence."

Criminal procedure.

54. With regard to criminal procedure, we have no further suggestions to offer. The mode of trial now followed in the recorder's court, and generally in the English criminal courts, ought to be the model of the new court.

Coroner's juries.

55. When treating of juries and assessors, in a former paragraph, we did not notice the question of coroner's juries. Without proposing any departure from the existing practice, or any change in the functions of that officer himself, we are inclined to recommend that the number of members required to form a coroner's jury should be everywhere reduced; and in Province Wellesley, in particular, we conceive that this alteration is essentially requisite.

Periodical statements.

56. We deem it very advisable that not only the professional judge, but the College of Justice, should have the means of scrutinizing and commenting upon the nature and quantity of civil and judicial business done by the local courts, independently of the opportunities afforded by appeals regularly preferred; and for this purpose each of the above-named tribunals should be furnished with periodical statements, similar to those submitted to the Sudder Dewanny Adawlut, and Sudder Nizamut Adawlut of Bengal. These statements should be laid before the professional judge, monthly by the local judge of Singapore, and by the judges of the other two settlements on his arrival on circuit, and should be transmitted by the professional judge, with any remarks elicited by his inspection of these documents, to the College of Justice every quarter, with a quarterly statement of the civil and criminal business, transacted by himself at each settlement on circuit, as well as in his own court at Singapore.

Establishments, civil and criminal.

57. The list of establishments we have prepared has been calculated as equal to the civil and criminal business of the courts at each settlement; but is not meant to interfere with, or cover the establishment now kept up at each, for police purposes, for which, from all the information before us, it does not appear to be more than sufficient.

Financial results of Law Commissioners' plan.

58. We proceed to show that the above scheme, in a financial point of view, is quite compatible with a very considerable annual reduction in the present charge. Statement "A." shows the establishment and charges which, it appears to us, might suffice upon our plan, compared with the present establishment and charges, and with the scheme proposed by the Governor-general.

59. It will be observed that we contemplate an annual charge to the amount of 1,06,640 rupees, which is less than the present cost by 95,294 rupees. The estimated charge by our plan is more than that which the scheme of the Governor-general included; but in the calculation of the expense of that scheme some heads of charge have been altogether omitted, besides a few subordinate items, which must have been provided for, such as the pay of clerks, &c., at the settlements of Penang and Malacca, and the salaries of the deputy sheriff and coroner. Allowing for these items, the expense would exceed the charge stated in our estimate.

Proposed by Law Commission - - - - - -			1,06,640
Governor-general's Sketch - - - - -		88,200	
Add for Penang - - - - -	13,620		
Malacca - - - - -	11,220		
	24,840		
Deduct allowed for in Gross - -	3,940		
		20,900	1,09,100
Excess of Charge over that of the Law Commission - -			2,460

60. Do

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60. Of course the great reduction arises from the abolition of the recorder's court, and its costly establishment. We propose that the barrister to be substituted for the recorder, shall receive a salary of 17,500 rupees, or 1,750*l.* per annum, being the same, within 56 rupees, that was allotted to the late registrar of the court.

Salary allotted to professional judge.

61. When we look at the salaries allowed to professional judges in other dependencies of the empire, we are satisfied that the allowance we propose will be sufficient to procure the services of one duly qualified for the judicial office in the Straits settlements. The sum of 1,500*l.* has been suggested as sufficient; but considering the position of the professional judge relatively to the executive officers who are to take a part in the judicial business, we do not think it could properly be made lower than we propose.

New South Wales:	
Chief Justice - - -	2,000
Puisne Judges - - -	1,500
Van Diemen's Land:	
Chief Justice - - -	1,500
Puisne Judges - - -	1,200
Cape of Good Hope:	
Chief Justice - - -	2,000
Puisne - - - -	1,200
Sierra Leone:	
Recorder - - - -	1,500

In Ceylon a barrister has lately been appointed to the office of district judge, upon a salary of 1,000*l.*, and it appears that an address to Her Majesty has been sent from the colony, praying for the appointment of professional judges to the other districts; it being assumed that competent professional persons could readily be procured to fill the office, at salaries varying from 600 *l.* to 1,200*l.* a year.

62. We propose an extra allowance of 2,500 rupees, or 250*l.* a year, to cover the expenses to which the professional judge will be liable on his circuits. Assuming that his passage will be provided for in the steamer kept up for the service of the Straits, as stated in the note to paragraph 453 of the Governor-general's Minute, and that he will have accommodation in public buildings while residing at each of the subordinate settlements, we suppose that he will be able to perform his functions at those settlements without other aid than can be afforded by the establishments attached to the local courts; and that it will not be necessary, therefore, to make any allowance for batta to clerks, &c. attending him on circuit; but we have allowed for a third clerk at Singapore, to transact the business of the professional judge, when at the head establishment.

Establishment at Province Wellesley.

63. We have not, under the head of Penang, allotted an extra establishment for the court of the assistant at "Province Wellesley," because that now kept up for the court of requests and police will suffice; and for that reason we have not proposed any reduction of that establishment.

Deputy sheriffs and coroner.

64. For the same reason we have not interfered with the allowances to the deputy sheriffs and coroners, as the duties of those officers must be performed as usual; and we have allotted a small salary for the deputy sheriff at Malacca, on that account.

Salaries of civil servants.

65. We have charged to the judicial establishment a moiety of the salaries of the resident councillors, at the rates to which the Governor-general proposed to reduce them, as intimated in his Minute, but have not charged any portion of the salary of the Governor, because it does not enter into our scheme to employ that officer in any judicial function.

66. The following is a Summary of the results:—

The existing Establishment and Charges are - - -	2,01,934
Those proposed by the Law Commission - - - -	1,06,640
Actual Reduction - - -	95,294
Proposed by Law Commission - - - - - -	1,06,640
Average receipts from fees, as per Governor-general's Minute	44,427
Net charge of New Judicial Establishment - - Rupees	62,213

67. We do not, however, pretend to offer the statement as more than an approximation to a complete scale. We think it probable the Straits authorities may show grounds for requiring a larger sum for establishments than we have given.

Rupees 43,440 46,644

given. Even assuming for this branch, rupees 45,000, which is more than we allow, though less than the existing charge, we should still have shown a positive clear reduction of rupees 94,000 per annum. Mr. Murchison allows that reduction is practicable to a considerable extent.

Propositions of the Law Commission.

68. Our several propositions may be thus briefly summed up:—

To abolish the recorder's court, quarter and petty sessions, and grand jury.

First. To surrender the charter of the recorder's court to the Crown; to abolish that court, both as a court of civil justice and of oyer and terminer, together with the courts of quarter and petty sessions, and the institution of the grand jury.

To establish local courts.

Secondly. To substitute for it a system of courts, to be superintended by a professional judge of not less than five years' standing at the Bar, aided by the resident and assistant resident at each island.

Modelled like subordinate courts at the presidency.

Thirdly. The courts held by them to be modelled according to the drafts for subordinate civil and criminal courts already submitted to government by the Law Commissioners in their reports, and subject to such alteration as the local position of those settlements calls for.

English law to be the *lex loci*.

Fourthly. To leave the English law as the *lex loci* of the Straits, as modified by the late enactments of the Indian legislature for them, and further modified according to the principles stated by the Indian Law Commissioners in their Report upon the *lex loci* of British India.

To remodel the judicial establishments.

Fifthly. To remodel the judicial establishment for these settlements according to the schedule annexed to this report.

Minor points connected with judicial administration.

69. We proceed to notice the minor alterations that have been suggested for improving the administration of justice in the Straits.

Petty and quarter sessions.

First. To appoint a court of petty sessions to relieve the quarter sessions by trying minor felonies, misdemeanors, and other offences specified, composing a great part of the duty now devolving on the latter court.

Grand jury.

Secondly. To abolish the grand jury, and recast the petty jury list.

Language of court.

Thirdly. To make the Malayan language the language of the courts, with exception of the barrister's court, which Mr. Murchison agreed might carry on its proceedings in English.

Independence of settlements as to process.

Fourthly. To consider each settlement as a separate county for all the purposes of process of the local courts, and therefore to have a separate sheriff, coroner, and registrar for each, and to make the process serve for each without the necessity of having it returnable for all three, (this particularly for sequestrations) and to allow certain "process which is now required to be under seal, and to be executed by the sheriff, to be exempt from such formalities."

Arrangement for salaries.

Fifthly. To render permanent and irrevocable the arrangement between the Honourable Company's government and the officers of court, for payment of fixed salaries in lieu of the fees, which are carried to account of government.

Military cases.

Sixthly. To render officers and soldiers amenable to the local courts for actions of debt, and personal actions under rupees 400.

Pauper establishment.

Seventhly. To make a pauper establishment.

Bankrupt law.

Eighthly. To erect a bankrupt court.

Admiralty jurisdiction.

Ninthly. To obtain Admiralty jurisdiction.

Evidence of convicts.

Tenthly. To render the testimony of convicts available.

Opinion of Law Commission on quarter session.

70. Of the above ten propositions the two first were entirely approved by the late Sir Benjamin Malkin, who was indeed the first to suggest a change on both points, and had intended to propose some modification of the court of quarter sessions itself, but withdrew this in favour of the proposal of the Governor-general for erecting a new court of pettey sessions The difficulty of adequately scrutinizing the decisions of the quarter sessions appears to lie in its being a peculiar sitting of the court of judicature itself.

71. We

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71. We think that when efficient local tribunals have been established for the prompt disposal of all cases as they arise within the respective jurisdictions, no necessity will exist for maintaining the cumbrous machinery of the quarter sessions; and we have recommended a discontinuance of the court of quarter sessions, and of the grand jury, for we are satisfied that with a professional judge to try the higher cases, assisted by a petit jury and assessors, and an efficient magistracy for disposal of minor cases as fast as they occur, there is no occasion for maintaining or re-organizing such establishments.

Grand jury.

72. The opinion of the Law Commissioners on the grand-jury question has been already recorded in their report of the 31st August 1838, and we will only here add, that we think the measure advisable, not only for the Straits, but for all the presidencies of India.

73. We may here properly advert to the proposition for investing the present court of quarter sessions in the Straits with increased power to try, without a jury, all minor felonies; that is, simple larcenies unattended with aggravating circumstances, made by the governor, Mr. Bonham, in July 1839; which was referred to the Law Commission.

74. We agree with Mr. Bonham that the delay consequent on the present system must be fatal to the ends of justice in settlements where the population is of an itinerant unsettled character, particularly that portion connected with shipping, as parties, being seafaring persons or sojourners, prefer forfeiting their recognizances to waiting for the sessions; and put up with being robbed and plundered in preference to the risk of being bound over to prosecute.

75. But we think that the whole of the difficulties above enumerated would be met and obviated by our plan for establishing a subordinate criminal court at each of these settlements; and for this further reason we would urge its being carried into effect, instead of investing with increased powers the court of petty sessions.

76. On the third point, the introduction of the Malayan language, it was suggested by Mr. Murchison, that it should be substituted for English in pleadings. It would seem, however, that he meant this only for courts held by lay judges; for, in reference to the court which he proposed to be held by a barrister, he supposed that "the process in it would still be carried on in English."

The Governor-general "objected strongly to a court conducting its business in a language unknown to the people concerned in it, who can therefore follow no part of the process, no part of the arguments on either side, and no part of the judgment," and was of opinion "that the business of the courts must be conducted in the Malayan language, that being the one most generally understood in those places;" he admitted, however, that whatever language might be employed commonly, interpretation must often be necessary. Sir Benjamin Malkin thought that by introducing the Malayan language into the proceedings of the court, the necessity of interpretation would not be nearly so completely done away, and the proceedings adopted would not be made so generally intelligible as the Governor-general imagined. He observed that, at Singapore especially, a large portion of the Chinese inhabitants do not understand Malay at all; and that the Chuleahs, a large and very litigious portion of the people, speak little except their own language; and although it is true that most foreign residents find it necessary to acquire the Malay language more or less, the acquirements of a very large portion of them are very small, not enough to enable them to give evidence or understand proceedings in that language, except very imperfectly, and yet perhaps in many instances sufficient to enable them to do in some degree, and thus to allow the proceedings to be conducted in a language ill understood, and inaccurately spoken.

Sir Benjamin Malkin further questioned whether judges, not professional, could be found having that full and intimate knowledge of the Malay language which a judge ought to have of the language in which he is to receive evidence, to deliver his judgments, and record his proceedings.

We have been informed that all public proceedings whatever, revenue, judicial, and police, are recorded in English; and we should feel great reluctance in recommending any change in this system. This is not like the question whether Latin, which in the reign of George II. was not the vernacular language of any nation, should continue to be the language of the English courts of justice; nor is it like the question whether Persian, which is not the vernacular language either of the governors or the governed, should continue to be the language of the East India

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Company's courts; neither is it exactly the same as the question whether the English or the language of the country should be that of those courts. This last seems to us a question not free from difficulty, and we are not now called upon to express an opinion upon it. One point, important to the consideration of that question, seems to be clear, viz. that the languages now spoken by the people of India will continue to be spoken by them, if not for ever, for a period too long for us to contemplate its end. But we conceive that the case is very different with such settlements as Ceylon and the Straits. In those settlements the proportion of English and foreigners to the natives is comparatively very great, and the territory is very small; it is therefore probable that the progress of the English language will be much more rapid than in India.

We look upon this change as so desirable for all parties, that we think some temporary inconvenience in the administration of justice might properly be submitted to for the purpose of accelerating it; but we believe that the inconvenience which this use of English may now occasion must be less than would be occasioned by the introduction of the Malay, either wholly or partially as a substitute.

We have been speaking only of the language of record. The parties, we think, should be entitled, at their option, either to an office copy or an office translation of the record. Witnesses must of course be admitted to testify in their own language, whatever it may be. Parties, when they address the court (a proceeding which under our system will be frequently occurring), must be admitted to do so in their own language in all courts. With regard to persons claiming to be heard in the character of legal advisers to others, we think that in the court of the professional judge it may properly be required of them that they should know and use the English language, being that of the judge and of the law he administers, while in the other courts we would, for the present at least, allow them to address the court in English or Malay. At a future period we should hope that the facilities for the acquisition of English will be much increased, and when that is the case, we think that a knowledge of it may be made a necessary condition of admittance as a practitioner in any court.

Process.

The fourth point requires little remark from us, if, as we hope, we have satisfied government of the suitableness of our system of courts to these settlements, wherein each court has an appropriate establishment allotted to it.

The fifth is one on which government alone are competent to form an opinion.

Military cases.

The sixth, we think, may be at once provided for by a short law enacting the proper remedy for a manifest omission in the existing law.

Pauper establishment.

On the seventh point, that of a pauper establishment, we have not sufficient information in the papers before us to admit of our forming an opinion. The necessity for one seems to be admitted; but from the cursory notice of it in Sir Benjamin Malkin's third letter, we suppose that the practicability of creating one is doubtful. He alludes to it as "forming part of the machinery of a King's Court in India," saying that "there may be difficulties attending it, especially at Singapore and Malacca." We therefore recommend that this subject be left open for further inquiry.

Bankrupt law.

82. Eighth.—On this point, the enactment of a bankrupt law, we trust to be able to submit a report treating of that question, not only for the Straits settlements, but for all India, which we have in hand, and in which we have made some progress.

Admiralty jurisdiction.

Evidence of convicts.

83. The ninth and tenth have been already, to a certain extent, carried into effect by the transmission from England of the letters patent for erecting a Court of Admiralty in the Straits, and by Act XIX. of 1837. But provision is still required to be made for giving Vice-admiralty jurisdiction to the court in that quarter as well as in India, and we beg on this point to refer to our remarks on this question at pages 300 and 303 of our Slavery Report, in explaining the inconveniences resulting from the want of a competent tribunal of this kind when seizures are made of vessels containing slaves. We beg to suggest that the recommendation for remedying this defect given in our Slavery Report, pages 368 and 369, should be adopted without delay.

We submit this our report for the consideration of your Lordship in Council.

A. Amos. *D. Eliott.*
C. H. Cameron. *H. Borradaile.*
F. Millett.

Indian Law Commission,
the 8th February 1842.

Appendix (A.)

PRESENT CHARGES.						PROPOSED BY THE GOVERNOR-GENERAL.								PROPOSED BY THE LAW COMMISSIONERS.								REMARKS.
Penang.		Malacca.		Total.		Singapore.		Penang.		Malacca.		Total.		Singapore.		Penang.		Malacca.		Total.		
thly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	Monthly.	Annual.	
- - -	- - -	- - -	- - -	3,368 - -	40,416 - -	- - -	- - -	- -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	1,458 5 4	17,500 - -	
- - -	- - -	- - -	- - -	300 - -																		
- - -	- - -	- - -	- - -	24 - -																		
- - -	- - -	- - -	- - -	22 - -																		
- - -	- - -	- - -	- - -	20 - -																		
- - -	- - -	- - -	- - -	*Sa.* 366 - -	*Company's.* 4,589 13 -																	
- - -	- - -	- - -	- - -	20 - -	240 - -	(*a*) - -	- - -	- - -	- - -	- - -	Passage -	- - -	5,000 - -									(*a*) The duties of this office to be performed by head clerk of each Court; *vide* Governor-general's Minute, paragraph 453.
- - -	- - -	- - -	- - -	Average of 3 years, 13,105 - -	9,856 4 -	- - -	- - -	- - -	- - -	- - -	Table -	10,000 - -	3,000 - -								(*b*) - -	(*b*) To cover the expense of table money on the circuit, and to give a few personal attendants, peons, &c.
- - -	- - -	- - -	- - -		1,845 12 -	- - -	- - -	- - -	- - -	- - -	Ditto Clerk -		1,500 - -							208 5 4	2,500 - -	
- - -	- - -	- - -	- - -		1,326 14 -	- - -	- - -	- - -	- - -	- - -	Ditto Servants		500 - -									
- - -	- - -	- - -	- - -	- - -	76 5 -	(*c*) - -	- - -	- - -	- - -	- - -	- - -	- - -	76 - -	(*c*) - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	(*c*) Transferred to local establishment, below.
- - -	- - -	- - -	- - -	Average, 1,463 1 -	17,556 - -	- - -	- - -	- - -	- - -	- - -	Governor's Circuit -	- - -	2,000 - -									
- - -	- - -	- - -	- - -	- - -	76,979 - -	- - -	- - -	- - -	- - -	- - -	- - -	- - -	13,148 - -	- - -	- - -	- - -	- - -	- - -	- - -	1,666 10 8	20,000 - -	
- - -	- - -	- - -	- - -	1,500 - -	18,000 - -	- - -	- - -	- - -	- - -	- - -	- - -	1,250 - -	15,000 - -									
-	12,000 - -	- - -	12,000 - -	- - -	39,000 - -	750 - -	9,600 - -	750 - -	9,000 - -	500 - -	6,000 - -	2,000 - -	24,000 - -	750 - -	9,000 - -	750 - -	9,000 - -	500 - -	6,000 - -	2,000 - -	24,000 - -	
(2)	9,831 - -	- - -	6,480 - -	- - -	21,311 - -	400 - -	4,800 - -	800 - -	9,600 - -	400 - -	4,800 - -	1,600 - -	19,200 - -	400 - -	4,800 - -	(2) 800 - -	9,600 - -	400 - -	4,800 - -	1,600 - -	19,200 - -	
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(B.)

POPULATION OF THE STRAITS SETTLEMENTS.

	Penang, 1835.	Province Wellesley, 1835.	Malacca, 1835.	Naning, 1835.	Singapore, 1834.	TOTAL of each Class.
Europeans and their descendants, English, Dutch, Portuguese, East Indians.	790	- -	- -	- -	251	1,041
Armenians - -	21	- -	- -	- -	44	65
Native Christians -	708	- -	- -	- -	326	1,034
Malays - - -	16,435	42,500	- -	- -	9,452	68,387
Achinese - - -	350	- -	- -	- -	- -	350
Javanese - - -	- -	- -	- -	- -	669	669
Chuliahs - - -	7,886	549	- -	- -	1,728	10,163
Natives of Bengal -	1,322	579	- -	- -	594	2,495
Arabs - - -	142	- -	- -	- -	66	208
Siamese - - -	- -	500	- -	- -	- -	1,148
Burmese - - -	648	- -	- -	- -	- -	
Balanese and Buggeese.	- -	- -	- -	- -	2,364	2,364
Battas - - -	561	- -	- -	- -	- -	561
Chinese - - -	8,751	2,252	- -	- -	10,777	21,780
Caffrees - - -	180	- -	- -	- -	62	242
Parsees - - -	50	- -	- -	- -	- -	50
Jews - - -	- -	- -	- -	- -	6	6
Fluctuating - -	400	500	- -	- -	- -	900
Grand Total - -	38,244	46,880	30,000	5,329	26,339	146,792

The statement of the population of Penang and Province Wellesley is taken from Captain James Low's "Dissertation on the Soil and Agriculture of the British Settlement of Penang," pp. 125–6. Besides the - - - - - 38,244

of Na- ry and Population of Penang, there were also on the island in 1835 native military and followers, averaged at - - - - - - - - - - - 700

Convicts - - - - - - - - - - - - - 1,263

Making in all - - - 40,207

The population of Malacca and Naning is taken from the same work, page 219. The population is not classified; but that of Naning is stated to be almost all Malays.

The population of Singapore is taken from Appendix, No. 12, to Governor-general's Minute, and is exclusive of military and convicts.

(C.)

EVIDENCE of Mr. *Wm. Young*, "Commissioner to inquire into the Condition of the Settlements in the Straits."

"I AM aware that the question of abolishing the Court of Judicature in the Straits has been under discussion. My opinion is, that so long as the law of England obtains in these settlements it would not be advisable to entrust the administration of it to unprofessional judges, without some professional check.

"The Court of Judicature is not only a court of first instance, but is also a court exercising a superintending jurisdiction over the justices of the peace and the court of requests; and I think it very necessary that some such jurisdiction should exist on the spot, to prevent the inconvenience which suitors must suffer from the delay in correcting the mistakes of those subordinate functionaries.

"A circuit made by a judge of the Supreme Court from Calcutta would not adequately perform these functions, unless it took place several times in the course of the year; I should say, not less than three times.

"I will give, as an illustration of the necessity of a professional judge, a case which occurred while I was in the Straits.

"The indorsee of a bill of lading, in which freight was expressed to have been paid in London,

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Abolishing the Recorder's Court in the Straits.

London, brought an action against the captain to recover the goods, he having refused to deliver them, on the ground that the freight had not in fact been paid. After the merits of the case had been investigated, the defendant objected that the plaintiff had no sufficient interest in the goods to maintain the action. No recorder was present, and the unprofessional judge decided that the objection was fatal, though the merits of the case were clearly with the plaintiff. It is generally understood that this decision is wrong in point of law.

"I think that, admitting the expediency of having a professional judge on the spot, for the decision of such cases as I have specified, it is nevertheless true that such a court ought not to be paid entirely out of the revenues of India. But some part of the expenses of such a court may reasonably be paid out of those revenues in respect of the benefit which India derives from the settlements in the Straits in a commercial way, and as receptacles for convicts.

"I see no mode in which the revenue of the Straits can be increased, except by customs.

"I do not hear that the decision of the Recorder's Court, by which it was held that the Dutch Roman law was abolished in Malacca, had created any dissatisfaction among the Dutch inhabitants.

"All conveyances of real property between Englishmen are according to the English forms; but the court would receive evidence of the native customs in a conveyance between natives.

"I wish to observe, that not only the European inhabitants, but also the natives, are very much attached to the present administration of justice, and that they would not like any such change as would leave the settlements without a professional judge.

"Supposing that the Recorder's Court is not abolished, the principal reform which appears to me to be necessary is, the simplification of the pleadings and procedure. Sir Benjamin Malkin did a great deal towards the accomplishment of this end. But now the business of preparing the pleadings has fallen into the hands of law agents, and they have become long and technical. The proper remedy for this, I conceive to be, that the parties should be obliged to state their case *vivâ voce*, in court, except in cases of sickness or other reasonable excuse.

"I do not think there would be any difficulty in finding persons competent, from their general respectability, to sit as jurors or assessors in the courts; but, inasmuch as it would be very difficult to find persons wholly disinterested, I think it would not be safe to make their verdict binding on the court. I do not think the people would at all complain of this burden if the number of jurors or assessors were limited to two or three.

"I was sent by the government of Bengal as a commissioner to inquire into the condition of the settlements in the Straits.

"I was about 18 months in the different settlements."

(D.)

Referred to in Para. 50 of the Law Commissioners' Report, dated 8th February 1842.

(No. 150.)

TO the Honourable the President of the Council of India in Council.

We have the honour to report on the subject referred to us in Mr. Secretary Macnaghten's letter, dated the 30th of May 1836, No. 149. This letter enclosed copies of two petitions to the government of India on the part of certain inhabitants of Calcutta, and of the reply thereto. The petitioners (amongst other matters) prayed revival of the court of quarter sessions in Calcutta, and we were directed to give the attention due to the petition, and in particular "to make such suggestions for improvements in the magistracy and in the local administration of justice in petty cases in Calcutta as might appear to us advisable."

2. We beg leave to refer your Honor in Council to the correspondence and papers noted in the margin. In our secretary's letter of the 19th of January 1838, we proposed, in the Act we were preparing, to render punishable by a magistrate the cheating in Calcutta by false weights and measures, and to this proposition the government assented by the Resolutions of the 7th February. Moreover, by the same Resolutions, we learn the opinion of Government, that, supposing any power now exists by law "to remove dangerous buildings, and to punish owners of public necessaries who neglect to keep them in proper condition, and for furious driving," provisions should be made for the exercise of such power by the magistrates.

Mr. Macnaghten's letter, dated 18th of August 1836, enclosing, amongst other papers, proposition of the Chief Magistrate of Calcutta, for enactment of certain municipal laws.

Our Secretary's reply on this subject, dated the 19th of January 1838.

Mr. Officiating Secretary Mangles's answer, dated 7th February 1838, with Orders and Resolutions of Government.

3. As we have now framed the proposed Act, we think these provisions could hardly be introduced into it consistently with a due regard to arrangement. We therefore propose to report separately upon those subjects, if your Honor in Council wish that we should now give our attention to them.

4. Before we enter upon the subject of this report, it is proper that we should state the causes of the delay which has occurred in presenting it.

5. In the division of labour which we have generally found it convenient to make in the Commission, the consideration of this subject devolved upon Mr. Cameron. A report was nearly

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nearly ready when he became incapable of business from illness, and he was ultimately obliged to make a voyage to the Cape of Good Hope, after which the attention of the Commission was wholly occupied with the preparation of the penal code. Mr. Cameron did not return till the beginning of this year, and it was not until the arrival of Mr. Amos, on the 18th of March, that he was able to resume the subject.

6. In the meantime all the other original members of the Commission had ceased to belong to it, and the present members were of course under the necessity of making themselves masters of the subject, and in consequence of their suggestions several changes have been recommended.

7. On the 4th May 1838 the intended recommendations, with the reasons for them, were submitted to the judges of the Supreme Court, and Sir E. Ryan's answer was received on the 23d of August 1838. Sir J. P. Grant's answer has not yet been received; he has promised to favour the Commissioners with some criticisms on the recommendations which we are about to notice. It seems, however, very uncertain when his judicial occupations, which we believe to have been lately peculiarly onerous, will permit him to fulfil his promise, and though we are sensible how much benefit we are likely to derive from a knowledge of his opinions, and of the grounds of them, yet we have thought it better, for two reasons, to forego that advantage for the present, rather than delay any longer the transmission of this report to Government.

8. These reasons are, first, because we learn, from personal communication with Sir E. Ryan, that since the illegality in the proceedings of the magistrates has been brought officially to his notice, he has thought it right to direct that no person committed for crimes which can only be lawfully tried by the Supreme Court, should be tried summarily by a magistrate, a practice to which the great inconvenience of the legal course seems to have given rise.

Secondly, because we are informed by our president that the attention of government has been for some time directed towards the important object of rendering the criminal courts of the mofussil more fit than they are now supposed to be for the trial of European delinquents; and we are decidedly of opinion that, assuming the institution of assessors (which we are now recommending) to be good and practicable, the necessity for such an institution is much greater in the mofussil courts than in one which is to sit in the midst of the metropolis. We will not fail, as soon as we are favoured with Sir J. Grant's observations, to forward them to government.

9. We now proceed to make a few remarks upon the papers which will be found in the Appendix.*

10. The draft Act, and the reasons for it, were sent at an early period for the consideration of the magistrates of Calcutta.

11. Mr. M'Farlan is the only one who has combated these reasons; and as in his paper on the subject he has animadverted upon the President's report on the judicial establishment of Ceylon, the President has drawn up a reply in his own name; but the other Commissioners desire to express their assent to this reply, so far as it relates to the general questions.

12. Mr. Gordon approves of the plan of assessors, which, as will be seen, is the principal novelty of our recommendations. The other magistrates have stated objections, which, for the most part, have been removed by alteration in the draft; they think, however, that the system of assessors will be very unpopular.

13. Sir E. Ryan has been good enough to give much attention to the subject, and has favoured us with three suggestions.

1st. Sir E. Ryan thinks, if the court of quarter sessions is not to be revived for the purpose of trying offences, it would be better at once to abolish it. We see no objection to this measure; but as it is not necessary to the purposes of our proposed Act, and as it involves considerations not connected with the administration of criminal justice, we have not introduced it into our draft, and we think it would more properly form the subject of a separate Act.

2d. We had framed the Act so as to authorize the appointment of any magistrate of Calcutta to hold the subordinate criminal court. Sir E. Ryan recommends that it would be the exclusive duty of one judge. We think this a decided improvement; and the draft, as it now stands, merely authorizes one judge to be appointed by the governor of Bengal to hold this court.

3d. Sir E. Ryan thinks that the writ of certiorari, by which proceedings could, as a matter of course, be removable from the subordinate criminal court into the Supreme Court, should not be taken away. We had ourselves intended to call the attention of government to a doubt we entertain as to the competency of the legislature of India to interfere with this high prerogative writ; but however that may be, we are satisfied, for the reason

* 1. Minute of Mr. Millett.
2. Letter of Sir E. Ryan, dated 13th August, containing his views and suggestions in regard to the proposed court.
3. Letter from the Magistrates of Calcutta on the subject, with its enclosures, viz. Minutes of Mr. M'Farlan and Mr. Gordon.
4. Letter from Mr. Blaquiere, dated 15th September 1836.
5. Minute of Mr. Cameron, in reply to Mr. M'Farlan's Minute.
6. Mr. Shakespear's Note.

reason assigned by Sir E. Ryan, that it would be inexpedient to take away the certiorari, and we have therefore expunged the provision to that effect which we had introduced into the Act.

14. The last Appendix is a note given to the President by the late lamented Mr. Shakespear, after he had considered the reasons upon which our draft Act is founded. We wish particularly to call the attention of government to this note, with reference to the important question of improving the administration of criminal justice in the mofussil. It will be seen that Mr. Shakespear thought the institution of assessors applicable to that purpose.

15. We deem it convenient in this place to recite the following passage from one of the petitions enclosed in Mr. Secretary Macnaghten's letter abovementioned.

"Your petitioners also beg leave to draw attention to an object of great local interest, and which has often been agitated; that is to say, the revival of the old court of quarter sessions of the peace, for the trial of minor offences and misdemeanors committed within the limits of Calcutta. The discontinuance of that court has long been felt as a local grievance. The time of the Superior Court has been occupied with matters greatly beneath its dignity; and the partial remedy attempted, by vesting increased power in the magistracy, without the aid of either jury or professional skill, has not only been unsatisfactory in the result, but is, moreover, a dangerous encroachment on that principle of English jurisprudence which awards to every one the right of trial by his equals."

16. We do not doubt that the time of the Supreme Court may be occupied more advantageously to the public than in the trial of minor offences; and we at the same time think it of importance to the morality of the lower orders that the charges commonly brought against persons of their class should receive, and be generally known to receive, the careful attention of a competent tribunal. We find with satisfaction that our opinions are thus essentially in unison with those of the petitioners, as regards the grievance of which they complain; but we believe that a better remedy may be found than the one which they suggest.

17. The court of quarter sessions naturally presented itself to their minds as an English institution, and as one which has already a sort of existence at Calcutta.

18. We hope, however, that an arrangement, which shall at once be more efficacious for its purpose, and impose less trouble upon the unofficial members of society, may be made by erecting a subordinate criminal court, to be presided over by a single judge, aided by three assessors, such court to have original jurisdiction over those minor felonies and other offences which are of most frequent occurrence. We would at the same time commit to each judge of the Supreme Court the power of correcting, in such manner as the case may require, any errors of the inferior court, the jurisdiction of the Supreme Court over the graver crimes remaining untouched.

19. As our plan innovates considerably upon the system of English judicature, though its most important ingredient is borrowed from that system, we shall be obliged to occupy the time of government by a discussion of some length.

20. It appears to us that, wherever circumstances admit of such an arrangement, the best constitution of a criminal tribunal is one salaried and professional judge, with a convenient number of unpaid and unofficial persons, who may be called jurors or assessors.*

21. If the judge is unpaid, and not a professional man, the requisite amount of knowledge and skill cannot be expected in him. By a professional man, we do not here mean a man who has practised at the bar, but a man who devotes his whole time to the duties of his office, and the acquisition of the knowledge, without which they cannot be efficiently discharged.

22. In a court of quarter sessions the judges may by law be unprofessional men; and if they all were so, in fact, such a court might more properly be said to consist of two juries than of judges and jurors.

23. In England the justices of the quorum were originally persons selected for their knowledge of law; and by the commission of the peace, the presence of one of the quorum was, and still is required in the trial of offences. But although, as Lambard quaintly remarks, "to say the truth, all statutes that require the presence of the quorum do tacitly signify such a learned man," yet at the present day no such qualification as learning is expected in the quorum: the defect is now supplied by appointing to the chair some man who has been at the bar, or who by assiduous attention to the discharge of his magisterial duties has become familiar with the criminal law; or else by letting the clerk of the peace, who ought to be the servant of the court, become the efficient judge of it.

24. Practically, then, an English court of quarter sessions, sitting for the trial of felonies, may be said to consist of one judge and a jury: the other ingredients which may enter into the composition are either inoperative, or productive of inconvenience as far as they do operate.

25. Instead

* For the sake of conciseness we shall use the word "jurors" or "jury" only in this discussion to express such unpaid and unprofessional persons. We wish also to observe, that what we have said respecting the constitution of a court has reference only to the object of judicature as such. For the purpose of training those who may aspire to become judges, it may be very desirable to have in each court a paid and permanent functionary, taking part in all the business of judicature except the decision.

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25. Instead therefore of a tribunal copied from an English court of quarter sessions, of which the best that could be hoped would be that, after some commotion among its elements, it would practically leave as a residuum a single judge and a jury, we propose the attainment of that end by direct legislation. We have already said that we consider this to be the best constitution of a criminal court; but if this is admitted, there remains a question, which we believe not to have hitherto received all the attention it merits, viz. what share of the business of judicature should be allotted respectively to these two essential parts of the tribunal.

26. We have nothing to propose as an improvement upon the mode in which the judge and jury at an English session of oyer and terminer co-operate in the investigation of the case before them.

27. The way in which such a judge first makes himself master of the case, and afterwards makes the jury masters of it, seems to us as perfect as is consistent with the infirmities of human nature. The English practice, by requiring the judge to sum up the evidence on both sides, to call the attention of the jury to all the circumstances which affect the weight of each article of proof, not confining himself to such as lead to the conclusion, which has established itself, or is establishing itself in his own mind, ensures a scrutiny more rigorous and impartial than could be obtained by any other method.

28. But when this process is completed, the question arises, who is to pronounce the decision?

29. Three answers to this question present themselves:

1st. Unanimity might be required, and the judge made to partake of the restraint and privation which are now the portion of discordant jurors; or,

2d. The opinion of the judge must go for nothing, except in so far as it may influence the mind of the jury, which is the English system; or,

3d. The opinion of the jury must go for nothing, except in so far as it may influence the mind of the judge, which is the system that appears to us most consonant to the dictates of reason.

30. For the correct solution of this question, a comparison must not be instituted between trial by jury and trial by a judge sitting alone. This, however, is the comparison most apt to suggest itself to the mind, because abundant examples have been exhibited in practice of judges sitting alone, while none (if we except one very recent experiment) has ever been seen of a judge sitting to try criminals with the assistance of a jury, but with a power to decide against their opinion. But it is manifestly this last arrangement of the judicial functions which ought to be compared with the English system for the purpose of deciding the question above proposed.

31. We admit without hesitation that wherever a jury can be conveniently assembled, the decision of a jury in criminal cases is much to be preferred to the decision of a judge sitting alone. But the difference is immense between judges habitually sitting alone and judges habitually sitting under the inspection and under the moral control of a jury.*

32. A judge may be presumed to bring to the work knowledge of the law and practical skill, but, in certain cases, there is danger of his being affected by an undue bias, and in general there is danger of his falling into a hasty and slovenly mode of transacting business, which has become to him matter of mere routine, and of his becoming irritable and impatient of contradiction. The tendency towards these faults is capable of being in a great degree counteracted by the mere admission of the public to the courts of justice. But the mere admission of the public does not ensure effectual publicity to all that takes place in court. A passive audience frequently loses the thread which connects the different incidents of the trial with each other. If anything escapes them, it commonly escapes them for ever, and whatever they do not comprehend at the moment it is done, or uttered, remains always a mystery to them. Now there is much in every trial which does not reach the ear of a passive audience, and much more which does not reach their understanding, and, consequently, something more than such an audience is required to prevent completely the evils which secrecy engenders. But it would be impossible, with any regard to order and regularity, to allow the public to ask questions of the judge and the witnesses, or to require the judge to sum up the evidence and to explain the law until the case was brought within the comprehension of every individual in court.

33. Here, as it seems to us, is the great use of the jury. They are a small, select, organized body, placed in a position where they can hear and see everything which passes in court. The duty of declaring their opinion is imposed upon them, by which their attention to the evidence and to the judge's remarks is ensured, and they have the most ample right to receive every explanation which they may think necessary to help them to a correct conclusion. The jury are the constitutional representatives of the community in legal affairs, and the responsibility which the judge feels to public opinion, is increased a hundred-

* It may be worth while to make a remark here which conduces to the clear understanding of the whole subject, though it is not necessary to the argument in the text.

The influence of juries where the institution obtains is not confined to the time of trial, nor to the judges who sit with juries, nor to the class of judges generally, but extends to the whole profession of the law, and to the public. Where that institution obtains, the bar and the public expect, and do not expect in vain, that a judge, though he may be sitting without the constitutional safeguard, will not disgrace the school in which he has been trained.

a hundred-fold, when he is thus bound, in the very act of judicature, to explain and justify his proceedings, and to set forth the grounds of a correct decision to the deputies of the people. A judge who at the present day, under a British Government, and in the midst of a British public, should decide against the opinion of the jury, would take upon himself such a load of responsibility as few men would choose to sustain unsupported by the consciousness of right intentions.

34. There have no doubt been periods in English history when the judges being thoroughly subservient to the Crown, and the Crown hostile to the people, the decision of the jury, notwithstanding its defects, was incomparably better in political causes than that of the judge, and perhaps, even under the most paternal government, it would not be prudent to leave the decision of such causes to the judges. But it is sufficient, on the present occasion, to remark that no political offence will be triable by the proposed court.

35. The jury, then, is an instrument, the best, we believe, that has ever been devised, for counteracting the temptations most likely to beset men in the position of a judge. But having used it for this purpose, having secured good judges by means of this instrument, we would not take the judicial function from those judges, and transfer it to the jury. The jury, though an admirable means of ensuring that the judicial function shall be performed in the best manner by those whom study and practice have qualified for the task, may be a very imperfect organ for the actual performance of that function. The following considerations satisfy us that they really are so.

36. The deputies of the people, as we have ventured to call the jury, though they generally come to the business of judicature with honest intentions and the zeal which novelty inspires, are ignorant of the law, and unpractised in applying its principles to particular cases, and in appreciating the weight of conflicting evidence. They are, besides, prone to be influenced by facts, and arguments, which do not touch the real merits of the case.

37. If they adopt the opinion of the judge, as they commonly do, that indeed is a proof that the consequences of these defects have been obviated on the particular occasion, but if they persist in differing from the judge, the presumption, apart from what may be known of the merits of the case, always is that they are wrong. For the defects which are almost sure to be found in them, are not such as can be cured at the trial by the presence of a judge, as the defects to be apprehended in the judicial order are cured by the habitual presence of a jury. It is impossible that a man who goes into the jury-box ignorant and unpractised should imbibe learning and skill in the course of a single day, though it is highly probable that a judge who might have leaned to the side of power, or given way to a culpable love of ease, or to an arrogant and impatient temper (if he had sat uncontrolled by a jury), should be set upright, and stimulated to exertion, and restrained from brow-beating the suitors and witnesses, by the moral force of those motives which the presence of a jury brings to bear upon him.

38. Even with respect to unfair bias, the very circumstance which makes a jury exempt from that particular bias towards the side of power with which a judge is sometimes affected, makes them at the same time more apt to yield to any casual motive which the case before them may present, independently of its real merits. The circumstance we mean is the transitory, unofficial, and occasional existence of each particular jury. A juror has no hope or fear of the unjust favour or displeasure of men in power, but neither has he any hope or fear of their just favour or displeasure. He cares little what the public may think of his verdict, for besides that the credit or disrepute of it is shared among many, his name is commonly unknown to anybody but the officer of the court, and when his work is over, he is lost in the crowd and never heard of again.

39. In England, where juries have acted so conspicuous a part, and where the nation is so justly proud of their performances, no individual ever acquired celebrity by a verdict; the institution indeed is the constant theme of applause, but the jurymen get no greater share of it than the bricks do of the praises which are bestowed upon a convenient house. Even where particular juries have returned verdicts which have been hailed with general delight, and which form epochs in English history, as in the case of Lilburn, of the seven bishops, or of Hardy, no person remembers the name of a single juryman.

40. There is another reason which we must not omit, because it applies to the question we are discussing where the jury is composed of natives, though happily it need not be taken into the account as regards Europeans.

41. We fear that the standard of morals is as yet so low among natives that bribery and intimidation would be employed to obtain a verdict from them, if their verdict, by reason of its binding force, were worth the risk and expense incident to the employment of such means. Even if no reward were promised or threat held out, we are afraid that, where the defendant is rich and powerful, the jury would be swayed by the hope of his favour in case of acquittal, or the fear of his anger if they gave a verdict consigning him to punishment. But a jury who can only affect the decision of the cause by watching the proceedings, by taking care that every part of the case is investigated and explained by the judge, so as to be brought within the comprehension of ordinary men, and by urging the arguments that may occur to them in favour of their own view, or by giving their sanction to a requisition for further investigation of the case by a superior court; such a jury, though powerful for good, is quite inefficient for evil. It will hardly be worth any man's while to bribe or threaten such a jury, and with regard to the hopes and fears they may entertain independently of bribes

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and threats, even should they yield to the influence of such motives, they can do no more than neglect their useful duty. Positive mischief is beyond their power.

42. We think, then, that whenever a judge and jury differ, political cases excepted, the presumption is strongly in favour of the opinion delivered by the learned and practised member of the tribunal, and we have accordingly proposed that the judge, and not the assessors, shall pronounce the decision both on law and fact.

43. We prefer a smaller number to the English number 12, because the benefit may thus (without increased inconvenience) be extended to a greater number of cases. It is obvious that 12 assessors, according to our plan, would perform four times the work of an equal number of jurymen.

44. The offences which we propose to submit to the new tribunal created by this Act are, in general terms, felonies, when they are of such a mitigated kind that the magistrate who takes the examinations thinks they would be sufficiently punished with a year's imprisonment; and misdemeanors, when the magistrate thinks they would be sufficiently punished by a fine of 1,000 rupees. This arrangement is by no means free from objection, but it is the best we have been able to devise without making much greater changes in the criminal law than would be at all convenient while a new penal code is under consideration. The designation of burglary conveys indeed to English ears the idea of very grave offences. But the houses of the lower order of natives are so constructed, and of such materials, that offences falling within the English definition of those crimes may be, and are constantly committed here, which do not evince the deliberate purpose and hardihood in crime implied in a similar attack upon a European house.

45. We have not thought it desirable to send the cases for which this Act is meant to provide before a grand jury.

46. If cases in which the state or public functionaries are concerned be excepted, we are unable to perceive the advantage of interposing anything between the magistrate who commits or bails a person accused of a crime, and the court which tries him. It seems clearly for the interests of justice that responsibility should be as much as possible concentrated upon the magistrate who is to decide whether those brought before him shall or shall not be subjected to the inconvenience and the provisional discredit (if we may so express ourselves) of imprisonment or bailment upon a criminal charge, especially as it would be hardly safe to deny to the magistrate the power of carrying on his investigation with closed doors. But when the magistrate's decision against the accused is backed by the finding of a true bill, his responsibility is absolutely at an end, and when his decision is reversed by the throwing out of the bill, the public, unless accidentally, knows nothing of the matter.

47. The tendency therefore of an institution interposed between the committing magistrate and the court which is to try, is to make the former negligent in the most important part of his duty; and this serious evil is not outweighed by any attendant advantage.

48. If this be so, it is scarcely worth while to remark that, even if it were expedient to keep up an institution between the magistrate and the court, a numerous assembly of unprofessional and unpaid gentlemen, who know no more of the law than they can collect from the judge's charge in ordinary cases, would be a very ill-constructed body for deciding whether there is sufficient ground for putting an accused person on his trial; especially as the preliminary investigation always is, and perhaps sometimes ought to be, a secret investigation.

49. The immense superiority of the judicial institutions of England, considered as a whole, to those of the continental nations, has excited in their favour sentiments of indiscriminate admiration. The grand jury has received its share of this admiration in the supposed character of a safeguard to innocence. We think it due to the celebrity of the English institutions, a celebrity, in many respects, well deserved, not to pass over in silence what may have been alleged in favour of this particular part of them.

50. But it does really require an effort of imagination to suppose a case in which a person against whom a grand jury would not have found a bill, should be convicted by a well-constituted tribunal. The grand jury hear only evidence for the prosecution; the tribunal hears also the evidence for the defence. The grand jury sits in secret; the proceedings of the tribunal are exposed to public scrutiny.

51. The case, however, though difficult to conceive, is not impossible. It has happened that an accused person has himself adduced evidence which has satisfied those who tried him of his guilt, and in this way a criminal who might perhaps have escaped trial if a preliminary investigation of nothing but the evidence against him had taken place, may nevertheless not escape conviction when his own witnesses have been heard. The conviction of a criminal, however, is not an evil but a good, and the moral possibility of such a misadventure as this occurring to an innocent man, if it be a moral possibility at all, is certainly among those which no legislature can undertake to guard against without doing much more mischief than it attempts to prevent.

52. We have now only to indicate very briefly the corrective jurisdiction which we propose to give to the judges of the Supreme Court.

53. We have provided a power to correct errors of law at once upon appeal, to order a new trial where the superior court thinks the case has not been properly investigated, and to order the magistrate to reconsider his finding where it thinks he has drawn a wrong conclusion of fact from the evidence adduced.

54. We have thought it expedient to limit the right of applying to the superior court

on

on matters of fact, to those cases in which at least one assessor is dissatisfied with the judge's decision.

55. We have purposely abstained from making any other changes in existing institutions (however desirable they might be if we were remodelling the whole law) than such as appear to us conducive to the object to which our immediate attention has been directed.

56. It will be observed that in this Act no mention is made of Madras and Bombay. As far as we are informed, we believe our recommendations to be equally applicable to those capitals. But we have thought it better to place our plan at once before government without waiting for the opinions which it would be proper to request from those presidencies before we could proceed to carry into effect the intentions of government as conveyed in Mr. Mangles' letter of the 7th of February 1838. We propose to address the proper authorities at Madras and Bombay on the subject without delay.

57. The following is the draft of an Act in which we have embodied our recommendations.

DRAFT ACT.

1. It is hereby enacted, that for the trial of such offences as are specified in sections 4th and 6th of this Act, a court shall be created and called the Subordinate Criminal Court for Calcutta, which shall be held by one judge, to be appointed for that purpose by the Governor of Bengal.

2. And it is hereby enacted, that such judge while holding a subordinate criminal court, shall be assisted by three assessors, to be selected on account of character and respectability, to whom he shall sum up the evidence on both sides, and who shall thereupon state their opinions *seriatim*, and the said judge having heard and considered the said opinions, shall pronounce the accused guilty or not guilty according to his own opinion, but shall nevertheless state in the finding the opinions of the assessors.

3. And it is hereby enacted, that such judge may for the purpose of such trial examine witnesses upon oath or solemn affirmation, which oath or affirmation such judge is hereby authorised to administer, and may try and convict any person for any of the offences specified in sections 4th and 6th of this Act upon the same evidence as would be sufficient for the trial and conviction of such defendant by a jury.

4. And it is hereby enacted, that the said subordinate criminal court shall be competent to try, without presentment or indictment by a grand jury, any of the following offences if they have been committed within the local criminal jurisdiction of Her Majesty's Supreme Court of Judicature at Fort William in Bengal.

Burglary.

Simple larceny.

The offence of breaking and entering any building and stealing therein any chattel, money or valuable security, such building being within the curtilege of a dwelling-house and occupied therewith, but not being part thereof, according to the provision in the 86th section of the Act of Parliament 9 Geo. 4, c. 74.

The offence of breaking and entering any shop, warehouse, or counting-house, and stealing therein any chattel, money, or valuable security.

The offence of stealing any goods or merchandise in any vessel, barge, or boat, of any description whatsoever, upon any river or canal, or in any creek communicating with such river or canal, and the offence of stealing any goods or merchandise from any dock, wharf, or quay adjacent to such river, canal, or creek.

The offence of stealing any security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether established by authority of Parliament or of the East India Company, or of any foreign state, or in any stock or fund of any body corporate, company, or society, or to any deposit in any savings bank, and the offence of stealing any indenture, deed, bond, will, note, warrant, order, or any other security whatsoever for money, or for payment of money, whether of the territories under the government of the said Company, or of any other of Her Majesty's dominions, or of any foreign country or state, and the offence of stealing any warrant, or order for the delivery or transfer of any goods or valuable thing.

The offence of stealing, or ripping, cutting, or breaking with intent to steal, any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material respectively, fixed in or to any building whatsoever, or anything made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden, or area, or in any square, street, or other place dedicated to public use or ornament.

The offence of corruptly taking any money or reward, directly or indirectly, under pretence or on account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained, or converted as aforesaid.

And the several offences of being accessory, either before or after the fact, to any of the above-mentioned offences.

5. Provided, that the said subordinate criminal court shall not try any of the above-mentioned offences, if in the commission thereof any person shall appear to have been armed with any deadly weapon, or to have used actual violence or threats, or show of violence, to any person.

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6. And it is enacted, that the said subordinate criminal court shall be competent to try, without presentment or indictment by a grand jury, any offence of the degree of a misdemeanor, except the offences of perjury, subornation of perjury, libel, conspiracy, and embezzlement.

7. Provided, that no justice of the peace shall commit any person for trial before the said subordinate criminal court on any charge of felony, unless he shall be of opinion that the offence which such person appears to have committed would be sufficiently punished with imprisonment for a term not exceeding 12 calendar months, or with some smaller punishment; and provided also, that the said subordinate criminal court shall not sentence any person found guilty of felony to any other punishment than imprisonment for a term not exceeding 12 calendar months.

8. And provided also, that no justice of the peace shall commit any person for trial before the said subordinate criminal court on any charge of misdemeanor, unless he shall be of opinion that the offence which such person appears to have committed would be sufficiently punished with fine not exceeding 1,000 rupees, and imprisonment not exceeding 12 calendar months, or with some smaller punishment; provided also, that the said subordinate criminal court shall not sentence any person found guilty of a misdemeanor to any other punishment than fine not exceeding 1,000 rupees, and imprisonment not exceeding 12 calendar months, or either of them.

9. And it is enacted, that from the day of any justice who shall have admitted to bail or committed to prison any person arrested for any offence triable by the said subordinate criminal court, or on suspicion thereof, and shall have taken the examination of such person and the information upon oath of those who know the facts and circumstances of the case, and shall have put the same or as much thereof as was material into writing, and shall have certified such bailment in writing, shall have authority to bind by recognizance all such persons as know or declare anything material touching any such offence or suspicion thereof to appear at any convenient time before the said subordinate criminal court, and there to prosecute or give evidence against the party accused, and such justice shall subscribe all such examinations, informations, bailments, and recognizances, and deliver or cause the same to be delivered to the clerk of the said subordinate criminal court before the trial.

10. And it is enacted, that in all cases in which the said subordinate criminal court shall have convicted any person, such person may, if he think that the conviction is wrong in point of law, appeal to Her Majesty's Supreme Court of Judicature, and that in all cases in which the said subordinate criminal court shall have convicted any person against the opinion of any one or more of the assessors, such person may move the said Supreme Court for a new trial, or for an order that the said subordinate criminal court do reconsider the finding and sentence.

11. Provided, that any person so appealing or moving shall give the prosecutor a notice in writing of such appeal or motion, and of the cause or matter thereof, within three days after such conviction, and the said Supreme Court shall hear and determine the matter of the appeal or motion, and shall make such order thereon, with or without costs to either party, as to the court shall seem meet, either by affirming or annulling the conviction, or by granting or refusing a new trial of the whole or any part of the case, or by granting or refusing an order to the said subordinate criminal court to reconsider the finding and sentence; and in case of the dismissal of the appeal, or refusal of the motion, or affirmance of the conviction, shall order the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and in case of non-payment of the same, may order such offender to undergo, in addition to such punishment, simple imprisonment not exceeding two months, and shall, if necessary, issue process for enforcing such judgment.

12. And it is enacted, that the chief justice and each of the puisne justices of the said Supreme Court may exercise severally and simultaneously all the powers and jurisdiction conferred upon the said Supreme Court by this Act, except the powers conferred by the 13th and 14th sections of this Act.

13. And it is enacted, that the judge of the said subordinate criminal court shall from time to time frame rules, declaring from among what class of persons, and in what manner, the assessors to the said subordinate criminal court shall be selected, and by what officers the lists shall be made out and the assessors summoned, which rules shall, after they have been approved by the said Supreme Court, have the same force as if they had been part of this Act, until revoked by the said judge, with the approbation of the said Supreme Court, or by the said Supreme Court.

14. And it is enacted, that the said Supreme Court shall from time to time make such rules and orders as to it shall seem meet for the regulation of the times at which the said subordinate criminal court shall be held, and of the manner of pleading therein, and of the manner in which the trials before the said court and the assessors shall be conducted, and shall direct in such rules what fines shall be imposed upon such persons as, being duly summoned as assessors, neglect or refuse to attend, and upon such assessors as misconduct themselves in the discharge of their duty, and what fines shall be imposed upon the officer by whom the lists of assessors are to be prepared and the officer by whom the assessors are to be summoned for any misconduct in the discharge of their duty, and also rules for the regulation of appeals from the said subordinate criminal court, and of motions for a new trial, or for an order to reconsider finding and sentence, all which rules shall, until revoked by the said Supreme Court, have the same force as if they had been part of this Act.

15. And

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15. And it is enacted, that the 22d section of the said Act of Parliament shall apply to the punishment of any offences punishable under this Act.

16. And it is enacted, that the 26th section of the said Act of Parliament shall apply to this Act.

17. And it is enacted, that all the provisions contained in the 51st section of the said Act of Parliament shall apply to all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act.

18. And it is enacted, that all the provisions respecting restitution of property contained in the 110th section of the said Act of Parliament shall apply to a prosecution under this Act before the said subordinate criminal court.

19. And it is enacted, that the said subordinate criminal court may apply towards the reasonable costs of prosecuting offences, or of compensating prosecutors, any part of the whole sum arising out of fines levied by the said court.

20. And it is enacted, that whenever in this Act reference is made to any Act of Parliament, or to any portion of any Act of Parliament, by the words chapter and section, and by a number prefixed thereto, reference shall be taken to be thereby made to the chapter and section distinguished by the same number in the copies of such Act printed by Her Majesty's printer.

21. And it is enacted, that in case of the absence or temporary disability of the said judge of the subordinate criminal court, the Governor of Bengal may appoint a substitute judge to hold the said Court, and that such substitute judge shall exercise all the powers conferred by this Act on the said judge.

We submit this our Report for the consideration of your Honor in Council.

(signed) *C. H. Cameron.*
F. Millett.
J. Young.

Indian Law Commission,
31 August 1838.

MINUTE of the Honourable *A. Amos*, dated the 18th March 1842.

Legis. Cons. 22 April 1842. No. 19. Judicature of the Straits Settlements.

I FIND that we have power to abolish the recorder's court without a reference home.

The course proposed is, that instead of all process issuing from the recorder's court (which magnified the office of registrar and was attended with the inconvenience of a large establishment moving from place to place), there are to be distinct courts at Singapore, Malacca, Penang, and Province Wellesley. The recorder's business will be confined to appeals, general superintendence, and the trial of civil and criminal cases of moment. The chief clerk of each court will do for that court what was done generally for all the courts by the registrar. If this scheme is approved of, the subordinate points of procedure may be most conveniently adjusted after a publication of the draft and obtaining the observations and suggestions of the Straits authorities with reference to it.

An immediate saving may be made in the salary of the registrar. When the recorder vacates, there will be no obligation to pay his successor more than the market value of his services, which, judging from the Ceylon and other appointments, is considerably less than what the recorder at present receives.

For the purposes of this scheme it will no longer be necessary to have both a governor and resident councillor at Singapore, should there be no other reasons for continuing this double expense.

Besides the economy of the measure, it will considerably expedite civil and criminal justice.

I have shown my draft to the Law Commission. It differs slightly, but not substantially, from the report. Some members of the Commission wished to be charged with the preparation of the draft themselves, in order that they might more elaborately provide for what is contained in the seventh and ninth sections, as they are anxious about introducing the practice of assessors in criminal trials, and the examination of parties, and the settlement of issues by the judge in civil cases. These matters, however, do not affect the general scheme for abolishing the recorder's court; they may lead to much discussion and difference of opinion, and they may be appended to the Act in its progress or be made the subject of a distinct law.

(signed) *A. Amos.*

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Legis. Cons. 22 April 1842. No. 20. Enclosure.

An Act for Amending the Judicature of the *Straits* Settlements.

1. It is hereby enacted, that instead of the present courts of judicature within the Straits settlements, the following shall be established from the day of

Courts of Original Civil Jurisdiction.

At Singapore a court of original civil jurisdiction in all matters at present within the cognizance of the recorder's court shall be constituted, consisting of a judge (who shall be a barrister of five years' standing), the resident councillor, and the assistant to the resident councillor; and if there be no resident councillor at Singapore, the governor shall be a member of the court. The members of the court shall try causes separately or jointly, and distribute the business among themselves at their discretion.

At Penang and Malacca like courts of original civil jurisdiction shall be established, consisting of the resident councillor and his assistant.

At Province Wellesley the assistant in charge shall hold a court for the trial of original civil causes.

2. And it is hereby enacted, that the courts at Penang, Malacca, and Province Wellesley shall, at their discretion, subject to such orders as they shall receive from Her Majesty's Supreme Court at Calcutta, reserve cases of extraordinary difficulty or importance to be tried originally by the judge, when he shall visit Penang and Malacca upon his circuit.

3. And it is hereby enacted, that the chief clerk of the courts aforesaid shall perform, in respect of the court to which he belongs, all the duties heretofore performed by the registrar of the recorder's court.

4. And it is hereby enacted, that the judge shall, three times in every year, visit the settlements of Penang and Malacca, for the purpose of trying original causes specially reserved for him as aforesaid, and for hearing appeals.

Courts of Appellate Jurisdiction.

5. And it is hereby enacted, that an appeal shall lie from the courts of Penang, Malacca, and Province Wellesley, to the judge, to be heard by him upon his circuit; and afterwards, should cause arise, but upon matters of law only, from the judge to Her Majesty's Supreme Court at Calcutta. The like rule shall prevail in regard to suits determined by a single member of the Singapore court other than the judge. The judge may, at his discretion, call for the proceedings in any suit not tried before himself, and set them aside, if contrary to law; but in every such case he shall forward the proceedings, together with his reasons for vacating the same, to Her Majesty's Supreme Court at Calcutta.

An appeal, both upon matters of law and fact, shall lie, in all suits determined originally by the judge, to Her Majesty's Supreme Court at Calcutta.

Courts of Criminal Jurisdiction.

6. And it is hereby enacted, that criminal offences shall be triable before each of the aforesaid courts, or the respective members thereof, except that all offences punishable by death or transportation for life shall be triable only before the judge. Any court or member thereof trying a criminal case may reserve any point of law for the decision of the judge, and the judge may reserve any point of law arising in a criminal case for the decision of Her Majesty's court at Calcutta. The judge may revise the proceedings in criminal cases not tried before himself, in like manner as is provided with regard to civil cases.

Procedure.

7. And it is hereby enacted, that in criminal cases which are not punished by transportation or imprisonment for more than six months, the trial may be before any member of the courts aforesaid respectively; in other cases a jury, consisting of five persons, shall be summoned. No grand jury shall be required.

8. And it is hereby enacted, that it shall be lawful for the Governor-general of India in Council to appoint all necessary officers for carrying the process of the aforesaid courts into execution, or to authorise their appointment by the courts aforesaid,

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aforesaid, and to determine the salaries of the judge and all other members and officers of the said courts.

9. And it is hereby enacted, that all proceedings in the courts aforesaid shall be as near those at present used in the recorder's court as is practicable, but so that each of the aforesaid courts shall issue and execute its own process. And it shall be lawful for the Governor-general in Council to issue rules for the amendment of the procedure of the aforesaid courts in all matters in which the judges of Her Majesty's Supreme Courts are allowed to frame rules of court with the sanction of the Governor-general in Council.

(No. 33.)

From Officiating Secretary to the Government of India to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, dated Council Chamber, the 22d April 1842.

Legis. Cons. 22 April 1842. No. 21.

Sir,

I AM directed by the Honourable the President in Council to request that the Law Commissioners will submit, for the consideration of the Supreme Government, the draft of an Act amending the judicature of the Straits settlements, with reference to their Report, dated the 8th February last, connected with the question of abolishing the recorder's court in the Straits. A draft Act on the same subject accompanies this communication; but it will not be necessary for the Commission to report upon that draft specially.

Legislative Dept.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

No. 3.
Recorder's Court: Registration of Conveyances.

No. 3.

RECORDER'S COURT IN THE STRAITS.

On the Registration of Conveyances of Real Property.

Legis. Cons. 17 June 1842. No. 2.

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department.

Sir,

THE Report of the Law Commissioners on the question of abolishing the recorder's court has been this day submitted.

2. I am directed therefore to return to you the original papers connected with that subject, which have been received from your office, and are specified in a list annexed.

3. I am directed at the same time to refer to my letter of the 11th July 1840. It communicates the intention of the Law Commissioners to include their suggestions in regard to the above subject in a general report on the judicatures and procedure at the places subject to the jurisdiction of Her Majesty's courts.

4. The Supreme Government, in its Resolutions of the 3d August 1840, communicated in your letter of that date, approved of this intention, with some qualifications; with reference to which, and the letter of Mr. Secretary Maddock, dated 22d November last, the Law Commissioners have deviated from their intention mentioned in my above-quoted letter, and submitted the report first noticed.

5. Mr. Secretary Maddock's letter calls the attention of the Law Commissioners to his previous letter of the 29th April 1840, with which were received certain papers connected with the Straits settlements, specified in a list annexed.

6. When Mr. W. R. Young was at the Straits as Commissioner under Act X. of 1837, Mr. Kerr submitted to him the draft of a law by which it was proposed that conveyances of real property, and their registration, should be regulated. The instructions to the Law Commissioners contained in Mr. Maddock's letter dated 29th April are, that they should consider the registration of tenures, as suggested by Mr. Kerr, in conjunction with the reform of the judicatures of those settlements, and should advise the government as to the expediency of a scheme of compulsory registration, based on the principles developed by Mr. Kerr's draft, or on other principles more approved.

7. The Law Commissioners direct me to state that they have devoted their attention to the draft law in question, and its relevant papers, and will in a separate report submit their views on the subject. They have deemed it more convenient to report on the reform of the Straits judicatures, with which the objects proposed by Mr. Kerr have no intimate connexion.

I have, &c.
(signed) *J. C. C. Sutherland*,
Secretary.

Indian Law Commission,
22 February 1842.

LIST of PAPERS relative to the Abolition of the Recorder's Court at *Penang*, *Singapore*, and *Malacca*.

Extract Despatch from Honourable Court of Directors, dated the 19th February last, paragraphs 2 and 3, with its Enclosure.

Public Letter from ditto (No. 66 of 1831), dated	27 July.
From Secretary to Governor-general	21 December 1831.
To the Advocate-general	10 January 1832.
From ditto	9 February 1832.
To the Resident at Singapore	14 February 1832.
Public Letter from Honourable Court (61 of 1832)	8 August.
To Governor of the Straits Settlements	15 January 1833.
From ditto ditto	23 July 1834.
To ditto ditto	8 September 1834.

From

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From Governor of the Straits Settlements	(1 Enclosure)	21 October 1834.
To ditto		22 December 1834.
From ditto	(6 Enclosures)	22 December 1834.
From ditto		4 February 1835.
From ditto	(2 Enclosures)	28 July 1835.
From Secretary Government of Bengal, to Secretary Government of India		2 September 1835.
From Governor of Straits Settlements	(1 Enclosure)	14 December 1835.
To ditto		10 February 1836.
From ditto	(1 Enclosure)	5 November 1836.
To Commissioner of ditto		25 October 1837.
Note by Governor of ditto		No date.
Minute by the Right Hon. Governor-general	(several Enclosures)	9 February 1837.
Ditto by Honourable Ross		22 March 1837.
Ditto by Honourable Shakespear		28 March 1837.
Minute by Honourable Ross		6 May 1837.
Draft Act.		
Resolution		24 May 1837.
Letter to Commissioner of Eastern Settlements		24 May 1837.
To Governor of ditto		24 May 1837.
To the Honourable the Recorder of ditto		24 May 1837.
To the Honourable Sir B. Malkin		5 July 1837.
From ditto		17 July 1837.
To Commissioner of Eastern Settlements		9 August 1837.
Resolution		18 October 1837.
Letter from Governor of Eastern Settlements		4 October 1837.
To ditto		8 November 1837.
From ditto		1 November 1837.
From Recorder of ditto	(1 Enclosure)	12 January 1838.
To ditto		14 March 1838.
From Honourable Sir B. Malkin		16 September 1837.
Minute by Honourable H. Shakespear		27 September 1837.
Ditto by the Right honourable Governor-general		16 October 1837.
Extract, Legislative Department		22 January 1838.
From Governor of Eastern Settlements	(1 Enclosure)	27 January 1838.
To ditto		25 April 1838.
From ditto	(1 Enclosure)	13 September 1838.
To ditto		24 October 1838.
Resolution, Legislative Department		22 January 1838.

From Officiating Secretary to the Government of India, to Secretaries Governments of Bengal (No. 41), North Western Provinces (No. 121), Madras (No. 122), and Bombay (No. 123).

Legis. Cons. 17 June 1842. No. 3.

Sir,

I AM directed by the Honourable the President in Council to transmit to you, for submission to the the accompanying printed report, dated the 8th February last, on the judicial establishment in the Straits, submitted by the Law Commissioners. Legis. Dep.

2. With the view of distributing the report to such officers within the presidency of as may be competent to advise on the subject discussed, copies of the report are forwarded.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Fort William, 17 June 1842.

(No. 124.)

From Officiating Secretary to the Government of India, to the Governor of Straits Settlements.

Legis. Cons. 17 June 1842. No. 4.

Sir,

I AM directed by the Honourable the President in Council to transmit to you the accompanying printed report, dated the 8th February last, submitted by the Law Commissioners, on the judicial establishment in the Straits, and to request that your Legis. Dep.

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your opinion, and that of any other officer competent to advise on the subject, may be submitted for the consideration of the Supreme Government.

2. With the view of distributing the report, six copies are forwarded.

I have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to the Government of India.

Fort William, 17 June 1842.

Legis. Cons. 17 June 1842. No. 5.

From Governmentof India to the Honourable the Judges of the Supreme Courts, Calcutta, Madras, and Bombay.

Legis. Dep.

Honourable Sirs,

We have the honour to forward to you the accompanying printed report, dated the 8th February last, submitted by the Law Commissioners, on the judicial establishment in the Straits, and shall feel obliged by any observations or suggestions you may offer on the subject.

We have, &c.
(signed) *W. W. Bird.*
W. Casement.
H. T. Prinsep.
A. Amos.

Fort William, 17 June 1842.

(No. 125.)

Legis. Cons. 17 June 1842. No. 6.

From Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Secretary to the Government of India, with the Governor-general.

Legis. Dep.

Sir,

I am directed by the Honourable the President in Council to transmit to you, for submission to the Right honourable the Governor-general, the accompanying printed report, dated the 8th February last, submitted by the Law Commissioners, on the judicial establishment in the Straits.

I have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to the Government of India.

Fort William, 17 June 1842.

(No. 42.)

Legis. Cons. 17 June 1842. No. 7.

From Officiating Secretary to the Government of India, to *C. R. Prinsep*, Esq. Officiating Advocate-general.

Legis. Dep.

Sir,

I am directed by the Honourable the President in Council to transmit to you the accompanying printed report, dated the 8th February last, submitted by the Law Commissioners, on the judicial establishment in the Straits, and to request that your opinion on the subject may be submitted for the consideration of the Supreme Government.

I have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to the Government of India.

Council Chamber, 17 June 1842.

(No. 43.)

Legis. Cons. 17 June 1842. No. 8.

From Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Dep.

Sir,

With reference to your letter dated the 22d February last, returning original papers connected with the judicial establishment in the Straits, I am directed by the

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the Honourable the President in Council to transmit to you, for the use of the Law Commissioners, eight printed copies of their report on the subject.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Council Chamber, 17 June 1842.

(No. 12 of 1842.)

From the Junior Secretary to the Government of India, with the Governor-general, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, Legislative Department, Fort William.

Legis. Cons. 22 July 1842. No. 13.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 125, dated 17 June, and to acquaint you that the printed report by the Law Commissioners on the judicial establishment in the Straits which accompanied it, has been submitted to the Governor-general.

Legis. Dep.

I have, &c.
(signed) *C. G. Mansel*,
Junior Secretary to the Government of India, with the Governor-general.

Allahabad, 9 July 1842.

(No. 493.)

From Acting Secretary to the Government of Fort St. George, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India; dated Fort St. George, 16 August 1842.

Legis. Cons. 2 September 1842. No. 66.

Sir,

I HAVE the honour, by desire of the Right honourable the Governor in Council, to acknowledge the receipt of your letter of the 17th of June last, accompanied by copies of the report of the Law Commission on the judicial establishment in the Straits; and to state, for the information of the Honourable the President in Council, that none of the public servants under this government appear to be acquainted with the subject of the enactment therein proposed.

Judicial Dep.

I have, &c.
(signed) *W. Elliot*,
Acting Secretary to Government.

From the Indian Law Commission, to the Honourable the President of the Council of India in Council; dated 6 August 1842.

Legis. Cons. 30 Dec. 1842. No. 3.

Honourable Sir,

AGREEABLY to the instructions conveyed to us in Mr. Secretary Halliday's letter, dated the 22d April last, we have the honour to submit the draft of an Act for abolishing the Court of Judicature in the Straits, and erecting other courts for the administration of civil and criminal justice in the settlements of Singapore, Prince of Wales' Island, and Malacca respectively, vested with all the powers of the existing court, except such as can be conferred only by charter or letters patent from the Crown, or by commission from the Admiralty.

In framing this draft we have taken from the charter, almost verbatim, such of the provisions relating to the jurisdiction, functions, and powers of the present court, and of the officers thereof, as, according to the plan indicated in our report under date the 8th February last, we have thought proper to be continued and made applicable to the new Courts, combining therewith the new rules proposed for the institution and distribution of original civil suits, and for pleading, and for the admission and hearing of appeals, regular and special, and the new provisions requisite for the administration of criminal justice under the altered constitution of the courts to be established.

As in this process we have not changed the language of the charter, some want of congruity, as regards style, will appear between those parts of the Act which have been

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been adopted from it, and those which have been prepared for this occasion; but we thought it right not to deviate from the phraseology to which the people were accustomed.

The first section declares the abolition of the Court of Judicature established by the charter, and of the courts of requests instituted under authority thereof.

The following sections, 2 to 11, declare the constitution of the new courts, and provide for the appointment and payment of the judges. It will be observed that we have not expressly provided that the resident counsellor and his assistant shall be the subordinate judges of the court at each settlement, but that it shall be competent to the Governor of Bengal to appoint persons, being executive officers of government, to be such judges; thus leaving it open to government to appoint persons who can devote their whole time to the business of judicature, if the finances of the settlements should ever admit of such an arrangement.

Section 12 provides for the appointment of a permanent sheriff to each settlement, to be made by the court, with the express consent always of the chief judge; and the following sections, to the 15th, are subsidiary, adopted from the charter, except the 14th, which provides for a deputy-sheriff in province Wellesley to execute the process of the judge who, according to section 25, is to be delegated from the general court of Prince of Wales' Island to sit there.

Sections 16 to 19, adopted from the charter, declare the jurisdiction and authority of the new courts.

Sections 20 to 22 provide for the intervention of assessors, when the Governor of Bengal in his discretion shall authorise their employment.

Section 23 indicates the manner of commencing suits, and the first steps to be taken by the judges receiving plaints. Sections 24 and 25 provide for the distribution of the suits for trial. Sections 26 to 32 describe the proceedings until the time when the pleadings are to be taken. Sections 33 and 34 provide for defaults by plaintiff and defendant.

The following sections, 35 and 36, prescribe the manner of pleading, and what is to be done thereupon. In framing those sections we have followed the draft we had the honour to submit, under date the 31st July 1841, relating to the subordinate civil court for Calcutta.

Section 37, relating to the administration of oaths, is taken from the charter, modified with reference to the Act of the government of India, No. V. of 1840, and the Statutes 3 & 4 Will. 4, c. 39 & 82, and 1 & 2 Vict. c. 77. By these statutes, Quakers, Moravians, and Separatists, and persons who were formerly Quakers or Moravians, but have seceded from those religious classes, nevertheless retaining conscientious objections to oaths, are privileged to take affirmations instead of oaths. It appears by the public papers, that in the present Session of Parliament a Bill had been introduced in the House of Lords to extend this privilege to members of other sects entertaining similar scruples, but had been withdrawn, in order that it might be altered so as to comprehend all persons conscientiously objecting to be sworn, on religious grounds. With reference to this proceeding in England, we beg to recall the attention of your Honour in Council to our report under date the 3d February 1840, and the draft Act submitted therewith, and would suggest that the section be further modified as therein recommended. We have omitted corporal punishment from among the punishments allowed to be inflicted on witnesses for contempt.

In section 38 we have ventured to suggest an alteration in the law of evidence, by a provision, that no person shall be excluded from giving evidence in any suit by reason of his being interested in the subject of litigation, or in the event of the suit. We believe that the principle of this suggestion is now generally approved, and that it is about to be introduced into the law of England.

Section 39 authorises the judge to award a reasonable payment to witnesses for their expenses, and to enforce the same.

Section 40 directs how the decrees of the courts shall be made; viz. that they shall be agreeable to equity and good conscience, following the laws enacted specially for the Straits settlements by Parliament, or by the government of India, and the law of England, so far as it has been held by the "Court of Judicature" to be applicable, or may be held to be applicable, upon the principles laid down by that court in its decisions.

In the 6th paragraph of our address to the Governor-general in Council, of the 8th February last, we declared our opinion that the principle, stated in our report upon the *lex loci* of British India, and the rules laid down in the draft founded upon

upon it, might with propriety be applied to the settlements in the Straits; but it does not appear to us that the proposed modifications of the law would fitly find a place in this Act.

Section 41 provides that the judge shall determine what shall be considered costs in the suit, and which party shall pay them, and to what amount, and whether the fees of attorneys and barristers shall be allowed as costs between party and party.

Section 42 provides for a fee to be paid by the losing party in a suit; the rate of the fee is left blank for the determination of government. We formerly made a recommendation to this effect for the courts of Mysore, which was adopted by government.

Section 43 provides for the punishment of a party or agent prevaricating, by fine within a limited amount, to be adjudged in the decree.

Sections 45 and 46 contain general provisions for execution, according to the charter; and in section 47 are provisions for the sequestration of the property of a defendant who is not to be found, and for eventual judgment *ex parte*, and execution of the same, also according to the charter.

Sections 48 and 49 provide for the custody of monies, &c. belonging to suitors, and constitute the Company's treasurer accountant of the court at each settlement.

Section 50 indicates the manner of proceeding in suits in which the Company is a party.

Section 51 directs that in ecclesiastical suits the proceedings shall be as near as possible the same as in other suits.

Sections 52 to 62 provide for the granting of probates of wills and letters of administration by the chief judge, and in his absence the first resident judge; and for the guardianship of the persons and property of infants and other incapacitated persons. The rules are adopted from the charter, *mutatis mutandis*, with reference to the altered constitution and jurisdiction of the courts.

Sections 63 and 64 contain rules for appeals, regular and special, according to the recommendations in paragraphs 38 to 42 of our Report of the 8th February last.

The rules we have framed for the administration of criminal justice, according to the recommendations in paragraphs 44 to 52 of our Report, will be found in sections 65 to 69, in which we have introduced also some of the provisions of the charter, with modifications to adapt them to the general scheme.

In clause 17 of section 65 is a provision exempting the chief judge from the jurisdiction of the courts in respect of all charges whatsoever, and exempting the governor and resident counsellors from their jurisdiction, according to the charter, in respect of all charges except charges of treason or felony. The reason of the distinction is, that treason and the more heinous felonies are under this Act beyond the jurisdiction of every judge but the chief judge himself. Being exempted from the jurisdiction of the courts in the Straits, the chief judge, we apprehend, will be amenable to the jurisdiction of the Supreme Court at Calcutta, as residing within the presidency of Bengal, of which these settlements form a part or appendage.

We have thought it expedient to provide (clause 18, section 65,) that charges against the subordinate judges of the local courts shall be heard and determined by the chief judge.

The provisions in sections 66 to 69 regarding the suspension, and respite, and mitigation of sentences, and for the pardon of criminals under sentence, and for compensation to prosecutors, are partly new, and partly adopted from the charter, with modifications.

In sections 70 to 72 we have provided for the mutual execution of the process of the courts in the several settlements, following substantially, as far as applicable, the rules contained in Act No. XX. of 1840, of the Government of India.

By section 73 it is left to the Governor of Bengal (in conformity with Act XXI. of 1837) to determine whether any and what oaths or affirmations shall be taken by the sheriffs, coroners, and other officers who shall be appointed under the Act.

And by section 74 the government of Bengal is authorised to settle the fees to be taken in the new courts, subject to the approbation and correction of the Governor-general of India in Council.

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By section 75 provision is made for the business pending in the existing court, according to the precedent furnished by the charter.

And lastly, the courts are authorised to establish general rules of process, subject to the orders of the Governor-general of India in Council.

76 & 77.

We noticed in our Report the suggestion of Sir Benjamin Malkin, that a provision should be made to render officers and soldiers amenable to the local courts in the Straits for actions of debt and personal actions, under 400 rupees. Sir Benjamin Malkin observed that "the existing difficulty would never have arisen, unless from the circumstance of these settlements having been forgotten by the framers of the Mutiny Act when they were providing for the cases of Calcutta, Madras, and Bombay." The provision referred to is, that where troops are serving beyond the jurisdiction of the courts of requests at Calcutta, Madras, and Bombay, actions of debt and personal actions, not exceeding 400 sicca rupees, shall be cognizable before a military court of requests, and not elsewhere. As the Mutiny Act cannot be altered by the Indian legislature, the defect can only be supplied by an Act of Parliament.

4 G. 4, c. 81, s. 57. 3 & 4 Vict. c. 37, s. 54.

3 & 4 W. 4, c. 85, s. 42.

We have not made any special provisions regarding appeals to the Privy Council, considering that the existing rules will be applicable without any declaration to that effect.

Rules passed by Her Majesty in Council, 10 April 1838.

To render the proposed courts completely efficient it will be necessary to obtain from the Crown a charter vesting them with admiralty jurisdiction, and also to procure vice-admiralty commissions for them.

We have, &c.
(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Legis. Cons. 30 Dec. 1842. No. 4. Enclosure.

I. Whereas it is expedient that the court of judicature of Prince of Wales' Island, Singapore, and Malacca, established by charter or letters patent of his Majesty King George 4, under date the 27th November, A.D. 1826, and the courts for the recovery of small debts, established in the said settlements under authority of the said charter, should be abolished, and that other provision should be made for the administration of justice in the said settlements: And whereas the Governor-general of India in Council has obtained the sanction of the Court of Directors of the East India Company to the abolition of the said court of judicature;

It is hereby enacted, that the jurisdiction of the court of judicature of Prince of Wales' Island, Singapore, and Malacca established by the said charter, and all powers and authorities thereby granted to or vested in the said court, and the jurisdiction of the courts for the recovery of small debts established in the said settlements, under authority of the said charter, shall cease and determine on the 31st day of .

II. And it is hereby enacted, that after 31st of A.D. the entire administration of justice, civil and criminal, within the said settlements, except in respect of causes and matters, and crimes and offences, falling within the jurisdiction of courts of admiralty and vice-admiralty and military courts, shall be vested exclusively in the courts constituted by this Act.

III. And it is hereby enacted, that on the 1st day of A.D. a court of record for the administration of civil and criminal justice shall be established in the settlement of Singapore, which shall consist of a chief judge and two or more subordinate judges, and a court of record, similarly constituted, in each of the settlements of Prince of Wales' Island and Malacca; and the said courts shall be called respectively "The General Court of Singapore," "The General Court of Prince of Wales' Island," and "The General Court of Malacca."

IV. And it is hereby enacted, that whenever in this Act any of the said settlements shall be mentioned all places subordinate or annexed thereto shall be understood to be included.

V. And it is hereby enacted, that the chief judge of the General Court of Singapore shall be also chief judge of the General Courts of Prince of Wales' Island and Malacca, and shall be called chief judge of Singapore, Prince of Wales' Island, and Malacca; and that such chief judge shall reside principally at Singapore,

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gapore, but shall visit each of the settlements of Prince of Wales' Island and Malacca three times in every year, and shall sit in court from time to time at each place in succession until he has disposed of the business that may be waiting for him, or may come before him during his visit.

VI. And it is hereby enacted, that such chief judge shall be a barrister of the English or Irish bar of not less than five years' standing, or an advocate of the Scottish bar of not less than five years' standing; that he shall be appointed by the Governor-general of India in Council; that he shall receive a salary of 17,500 Company's rupees by the year; and that he shall not hold any other office, place, or employment, or be engaged in or carry on any trade, traffic, or business whatsoever, on pain that the acceptance of any such other office, place, or employment, or the engaging in or carrying on any such trade, traffic, or business, shall be in law an avoidance of the office of chief judge.

VII. And it is hereby enacted, that the number of subordinate judges to be appointed to the General Court in each of the said settlements, who shall be called resident judges of such settlement, and shall be distinguished as first, second, and so on, shall be determined by the Governor-general of India in Council, and may be reduced or increased from time to time as to the said Governor-general in Council may seem meet.

VIII. And it is hereby enacted, that such resident judges shall be appointed by the Governor of Bengal; and that it shall be competent to him to appoint persons being executive officers of government to be such judges.

IX. And it is hereby enacted, that the salary to be assigned to every such judge shall be determined by the Governor-general of India in Council, regard being had to his qualifications, and, if he holds any other office under government, to the salary of that office.

X. And it is hereby enacted, that every chief judge and other judge appointed as aforesaid, before he shall be capable of exercising the office of judge, or magistrate, under this Act, shall take in open court, in such manner as shall be directed by the Governor of Bengal, an oath, or shall make a solemn declaration, as shall be ordered by the said Governor of Bengal, that he will, to the best of his knowledge, skill, and judgment, duly execute the office of judge, or magistrate, and impartially administer justice in every cause, matter, or thing which shall come before him; of which oath or declaration a record shall forthwith be made.

XI. And it is hereby enacted, that the said chief judge, and every other judge of the said courts, shall have and use a seal with his official designation inscribed upon it; and that all notices, writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by such chief or other judge shall be sealed with such seal, and shall be signed by such chief or other judge.

XII. And it is hereby enacted, that a fit and proper person shall be appointed by each of the said general courts to be sheriff of the settlement subject to the jurisdiction of such court, who shall continue in such office until another person shall be appointed by the same authority to succeed him therein: provided that no person shall be appointed sheriff of any of the said settlements, and that no person having been duly appointed sheriff shall be removed from office, without the express consent of the chief judge.

XIII. And it is hereby enacted, that the sheriff of every settlement appointed as aforesaid shall execute all the writs, summonses, rules, orders, warrants, commands, and process of the several judges of the General Court of the settlement, and make returns of the same, together with the manner of the execution thereof, to the judge who shall have issued the same, and shall receive and detain in prison all such persons as shall be committed to his custody by any of the said judges, or any other person having competent authority so to do; and to do all such acts, matters, and things, and perform all such duties, as nearly as circumstances shall admit or require, as are or ought to be done and performed by the sheriff of any shire or county in England.

XIV. Provided that the sheriff of Prince of Wales' Island shall appoint a deputy, for whom he shall be responsible, to execute the process issued by the resident judge in province Wellesley.

XV. And it is hereby enacted, that whenever any of the judges of any of the said courts shall direct and award any process against the said sheriff, or award any process in any cause, matter, or thing, wherein the said sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot, or ought not

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not by law to execute the same, in every such case such judge shall name and appoint some other fit person to execute and return the same, and the said process shall be directed to the said person so named for that purpose, and the cause of such special proceedings shall be suggested and entered on the records of the said court.

XVI. And it is hereby enacted, that the chief and other several judges of the said courts shall have such jurisdiction and authority as the Court of Queen's Bench and the justices thereof, and also as the High Court of Chancery and the Courts of Common Pleas and Exchequer respectively, and the several judges, justices, and barons thereof respectively, have and may lawfully exercise within that part of the United Kingdom called England, in all civil and criminal actions and suits, and in matters concerning the revenue; and that the said judges severally shall have and exercise the jurisdiction exercised by the ecclesiastical courts in England, so far as the several religions, manners, and customs of the inhabitants of the said settlements will admit.

XVII. And it is hereby enacted, that each of the said courts, within the settlement for which it is constituted, shall have full power to hear, examine, try, and determine, in manner hereinafter mentioned, all actions and suits which shall or may arise or happen, or be brought or promoted, upon or concerning any trespasses or injuries, of what nature or kind soever; or any debts, duties, demands, interests, or concerns, of what nature or kind soever; or any rights, titles, claims, or demands of, in, or to any houses, lands, or other things, real or personal, within such settlements, or touching the possession, or any interest or lien in or upon the same; and all pleas, real, personal, or mixed, the causes of which shall or may hereafter arise, accrue, and grow, or shall have heretofore arisen, accrued, and grown, against the East India Company, and against any persons who shall be resident within such settlement, or who shall have resided there, or who shall have any debts, effects, or estate, real or personal, within the same, and against the executors and administrators of such persons.

XVIII. Provided always, that it shall not be competent to such court to try or determine any suit or action against any person who shall never have been resident in the said settlement, or against any person then resident in Great Britain or Ireland, unless such suit or action against such person so then resident in Great Britain or Ireland shall be commenced within two years after the cause of action arose, and the sum to be recovered be not of greater value than 12,000 dollars.

XIX. Provided always, that nothing in this Act shall extend, or be construed to extend, to subject the person of the governor or resident, or any of the counsellors of the said settlements, or the person of the chief judge of Singapore, Prince of Wales' Island, and Malacca, to be arrested or imprisoned in any civil suit, action, or proceeding in any of the said courts.

XX. And whereas it is conducive to the good administration of justice that the respectable part of the public should be associated therein, it is hereby enacted, that the Governor of Bengal may, by proclamation, order or authorise every or any judge of the said courts, in all civil suits as aforesaid, or in any particular class of suits, and in all proceedings therein, or in any particular suit or in any particular proceeding therein, to sit with one or more assessors; and such assessor or assessors shall take an oath, or make a solemn affirmation, in the manner hereinafter prescribed for witnesses, to examine carefully, and to deliver a faithful and impartial opinion, jointly or severally, upon the matters or points at issue; and the opinion so delivered shall be recorded.

XXI. Provided always, that the opinion of such assessor or assessors shall be only for the information of the conscience of the judge.

XXII. And it is hereby enacted, that the same process shall be used for summoning assessors in civil suits as is hereinafter directed to be used in criminal cases, and persons refusing or neglecting to attend accordingly, or be sworn or make affirmation, shall be subject to the like punishment as is authorised for such contempt in criminal cases.

XXIII. Clause 1. And it is hereby enacted, that the manner of commencing suits, other than ecclesiastical suits, in the said courts, shall be as follows:—

Clause 2. In each court the resident judges, and at Singapore the chief judge also, when he is at the settlement, shall each sit at stated hours daily, or on stated days, for the purpose of hearing plaints.

Clause 3. Every plaintiff bringing a suit in any of the said courts, shall, except as hereinafter excepted, appear in person before one of the sitting judges, and shall, orally or in writing, lay before such judge the facts which constitute his claim.

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Clause 4. The excepted cases in which the plaintiff shall be excused from appearing in person, for the purpose of making the statement of facts mentioned in the last clause, are the same as the excepted cases specified in Section XXX, but the plaintiff shall in all cases be permitted to make the statement of facts by an agent, provided he deposit in court the sum of rupees .

Clause 5. The sum so deposited shall be held as a security for anything which may be, or which may become, due to the defendant or to the government, in respect of the matter of the suit, or in respect of the mode of conducting it; and so much of the said sum as shall not be so due, or become so due, shall be repaid to the plaintiff.

Clause 6. If the plaintiff lays the facts before the judge orally, the facts, whether stated of his own accord or elicited by examination, shall be reduced into form and written down by the judge, or by an officer of the court under his direction, and shall constitute the plaint.

Clause 7. If the plaintiff lays the facts before the judge in writing, the written statement shall be corrected in form by the judge, or by an officer of the court under his direction, if it requires such correction, and in substance if it in any respect disagrees with the statement of facts elicited by the examination of the plaintiff: subject to such correction, the written statement shall constitute the plaint.

Clause 8. When the statement of facts constituting the plaint has been made, the judge, if he is of opinion that the plaint does not contain any cause of suit against the defendant, or that the defendant or the matter of the suit is not within the jurisdiction of the court, shall make a decree accordingly.

XXIV. Clause 1. And it is hereby enacted, that the plaints received in the said courts shall be disposed of as follows:—

Clause 2. In the court of Singapore, when the chief judge is at the settlement, on every day on which any of the judges shall sit for the purpose of receiving plaints, all the plaints received, except such as are determined under clause 8 of the last section, shall be laid before the chief judge, who shall distribute them for trial and decision among all the judges, including himself.

Clause 3. In distributing the plaints, the chief judge shall endeavour to give to each judge a share of them proportioned to the time which he is able to devote to judicial business and those kinds of suits which he thinks him best qualified to decide.

Clause 4. Provided, that the chief judge shall reserve to himself all cases involving difficult or doubtful points of law, and questions of importance which have not previously been determined; all suits in which the 1st resident judge is a party, or is related to or connected with a party, or is anywise interested; all suits in which government is a party; and all suits in which the amount involves a dispute exceeding 10,000 rupees, wherein an appeal may be preferred to the Privy Council, under the Rules passed by Her Majesty in Council, of date the 10th April 1838; and that all suits in which he is himself a party, or related to or connected with a party, or is anywise interested, shall be assigned to the 1st resident judge.

Clause 5. In the court of Singapore, in the absence of the chief judge, and at all times in the courts of Prince of Wales' Island and Malacca, all the plaints received shall be laid before the 1st resident judge, who shall distribute them in the manner directed in the 3d and 4th clauses of this section.

Clause 6. Provided, that the chief judge shall have power to call up and place on his own file any causes assigned to other judges which he shall deem it proper to hear and decide himself, and to transfer to other judges any causes assigned to himself which he shall think not to be of a nature to require his attention.

XXV. And it is hereby enacted, that one of the resident judges of the court of Prince of Wales' Island shall sit separately in province Wellesley, and shall receive all plaints that may be preferred to him against persons residing in the said province, of which he shall reserve to himself all such as, according to the arrangement for the distribution of causes which shall be observed in the said court, would fall to him if he was sitting in it, and shall remit all others to the 1st resident judge, to be disposed of as if they had been preferred in the said court.

XXVI. Clause 1. And it is hereby enacted, that the following shall be the manner of proceeding after the plaints are distributed:

Clause 2. Every judge to whom a plaint is assigned for trial shall immediately place it on his file, and shall direct a writ of summons to be issued to the defendant.

Clause 3. The writ of summons shall contain a copy of the plaint and an order to the defendant to appear before the court on a specified day, and to bring with him

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him any documents which he may have in his possession, of which the plaintiff, with the consent of the judge, demands inspection, or which the defendant may think conducive to his defence, and a list of such witnesses as he supposes may be necessary for his defence.

Clause 4. If the plaintiff satisfies the judge that the defendant is likely to withdraw himself from the jurisdiction of the court, the judge may direct a warrant of arrest against the defendant, to be issued together with the writ of summons.

Clause 5. If the defendant is arrested on the warrant, he shall be brought with all convenient speed before the judge, who may discharge him from custody, if he gives sufficient security for his appearance, or if he deposits a sum which the judge considers, under all the circumstances of the case, sufficient, or if he satisfies the judge that he does not intend to withdraw himself from the jurisdiction; if the defendant does not fulfil any of these conditions, the judge shall commit him to prison until he shall give the security, or make the deposit required, or failing thereof, until judgment shall be passed.

XXVII. Provided, and it is hereby enacted, that in suits assigned to the chief judge in any of the courts in his absence, it shall be competent to the first resident judge, when the plaintiff satisfies the said judge that the defendant is likely to withdraw himself from the jurisdiction of the court, to issue a writ of summons to the defendant instantly, together with a warrant for his arrest; and if the defendant is arrested, it shall be competent to the said judge to proceed according to clause 5 of the last Section.

XXVIII. And it is hereby enacted, that in the absence of the chief judge, it shall be competent to the first resident judge of any of the courts, in any suit on the file of the chief judge in such court, when it shall be certified to him by or on behalf of one of the parties that a material witness is about to depart from the jurisdiction of the court, and is not likely to be present when the cause is heard by the chief judge, to issue a summons to such witness, and to take his examination, but not without notice to the opposite party to attend at such examination; and any deposition so taken, and duly certified, shall be read in evidence at the hearing of the cause by the chief judge, if the witness shall then be absent from the jurisdiction, or unable from sickness or infirmity to attend, or if the chief judge, in his discretion, shall think fit to dispense with his attendance.

XXIX. And it is hereby enacted, that in the absence of the chief judge, it shall be competent to the first resident judge of any of the courts, in any suit on the file of the chief judge in such court, to take all other steps which cannot be delayed without risk of injustice.

XXX. Clause 1. And it is hereby enacted, that every plaintiff and defendant, in any suit in any of the said courts, shall appear, except as hereinafter excepted, in person, on the day specified in the writ of summons, and on every other day fixed for their appearance by the judge hearing the cause.

Clause 2. A plaintiff or defendant may be excused from appearing in person, if ill, if absent from the settlement, if engaged in the public service, if exempted on account of rank by any rule or regulation, or by a special privilege heretofore judicially recognised, from appearing in a court of justice, if of advanced age, if of the female sex, if there is a co-plaintiff who appears in person, if there is a co-defendant defending jointly, who appears in person.

Clause 3. But in all these cases the judge may refuse to hold the party excused from appearing in person, if he is not satisfied that the excuse is made in good faith, and that the matter of the excuse exists in a sufficient degree to justify him in admitting it.

XXXI. And it is hereby enacted, that whenever an agent has been admitted in place of a party, such agent shall be permitted to do all the party might have done had he appeared, and shall be liable to be examined and cross-examined in the same manner.

XXXII. And it is hereby enacted, that the judge may, if he thinks fit, order that the party excused shall be examined in any way in which an absent witness may be examined.

XXXIII. And it is hereby enacted, that when a plaintiff shall not appear, in person or by agent, on the day appointed in the writ of summons to the defendant, the judge may provisionally make a decree against him, which the judge may rescind, if the plaintiff appears, in person or by agent, within a reasonable time after the said day, and shows sufficient cause; and if the plaintiff shall not appear in person on the said day, but shall appear by agent, and the judge shall not admit

admit the excuse offered by the agent for the non-appearance of the plaintiff in person, the judge may nevertheless examine the agent upon the merits of the suit, and may make a decree against the plaintiff; or he may order the agent to summon the plaintiff to appear on a specified day, and adjourn the proceedings to that day, and if the plaintiff shall not then appear, shall make a decree against him.

XXXIV. Clause 1. And it is hereby enacted, that if, after due service of the summons, the defendant shall not appear, in person or by agent, upon the day appointed, the judge may make a decree, after considering the allegations of the plaintiff alone, and the evidence adduced in support thereof; and if the defendant shall appear by agent on the said day, and the judge shall not admit the excuse offered by the agent for the non-appearance of the defendant in person, he may make a decree against the defendant, after examining the agent upon the merits of the suit.

Clause 2. Provided, that when an agent shall appear for the defendant, the judge may order the agent to summon the defendant to appear in person on a specified day, and adjourn the proceedings to that day; and if he shall not then appear, shall make a decree as aforesaid.

Clause 3. And provided, that when a decree shall be made, as aforesaid, without the appearance of the defendant in person or by agent, and the defendant shall appear in person or by agent within a reasonable time afterwards, and shall show sufficient cause, the judge may rescind the same.

XXXV. And it is hereby enacted, that as soon as the plaintiff and defendant are together before the court, in person or by agent, the judge shall proceed to take the pleadings and settle the demurrers and issues of fact.

XXXVI. Clause 1. And it is hereby enacted, that the manner of pleading shall be as follows, whether the subject-matter of the suit be of a legal or equitable nature, or of both:

Clause 2. The defendant, in answer to questions put by the judge, shall confess or deny each of the material allegations contained in the plaint, and shall state any matter whereby he proposes to avoid the plaintiff's right to a decree arising out of such allegations contained in the plaint as he has confessed.

Clause 3. The defendant may demur, if he thinks the plaint states a case insufficient to entitle the plaintiff to a decree.

Clause 4. The defendant shall not be precluded from demurring to any matter in the plaint because he has pleaded to it, nor shall he be precluded from pleading to any matter in the plaint because he has demurred to it.

Clause 5. The defendant shall not be precluded from denying as many of the allegations in the plaint as he disbelieves.

Clause 6. The defendant shall not be precluded from avoiding the plaintiff's right to a decree arising out of any allegations in the plaint which the defendant has confessed by the statement of as many matters as he believes to be true.

Clause 7. The judge shall take care that in reducing the pleadings to writing, pleas shall be kept distinct from demurrers, and that no plea shall be double; and also that pleas containing legal matter shall be kept distinct from pleas containing equitable matter.

Clause 8. The judge shall also take care that the pleadings shall not be argumentative, and shall state matters of fact only, and not evidence of matters of fact, and shall in other respects be such as to lead directly to distinct issues of law or equity, or fact, and that each issue shall have as much particularity as conveniently may be.

Clause 9. All the above rules of pleading shall be applied, as far as they are capable of such application, to the subsequent stages of the pleadings.

Clause 10. If, after the demurrers and issues of fact have been settled, a decree can be properly made without further evidence than that of the parties, and without argument on the law or equity and good conscience of the case, the judge shall make his decree immediately.

Clause 11. The plaintiff and defendant may, through the medium of the judge, cross-examine each other as to any matter affirmed or denied on either side in pleading.

Clause 12. If any demurrer results from the pleadings which the judge thinks fit for argument, he shall, after consultation with the parties, fix a day for the argument on it.

Clause 13. If any issue of fact results from the pleadings upon which it is necessary

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necessary to hear evidence, the judge shall make a note of the names of the witnesses on both sides, and of the facts which each of them is expected to prove, and the documents which each of them is expected to produce, and shall grant such subpœnas, and subpœnas duces tecum, as appear to him to be necessary for the purpose of justice, and shall, after consultation with the parties, fix a day for the taking of evidence.

Clause 14. Provided, that if it shall appear to the judge at this, or any other stage of the suit, that justice cannot be done without hearing some person, not a party to the suit, who may appear to be interested in it, the judge shall direct a summons to be issued to such person to defend his interest, and it shall be competent to the judge to hear any other person, appearing voluntarily, without a summons, and claiming an interest in the suit.

Clause 15. And provided, that if in any suit before a judge, not being the chief judge, it shall appear to such judge, while he is taking the pleadings, or in any subsequent stage, that the suit is one which ought to be heard and determined by the chief judge, he shall transfer the suit to the chief judge, and direct the parties to appear before him, and the chief judge shall proceed with the suit.

XXXVII. And it is hereby enacted, that every judge in each of the said courts shall be empowered to administer to witnesses and others whom he may see occasion to examine in any suit or proceeding before him, proper oaths and affirmations, that is to say, to such persons as profess the Christian religion, the oath upon the Holy Evangelists of God, and to Quakers, Moravians, and others who are exempted by law from taking oaths in the courts in England, the affirmation according to the form used in England for that purpose; and to Hindoos and Mahomedans, the affimation prescribed by Act No. V. of 1840 of the Governor-general of India in Council; and to others such oath, in such manner and form as he shall deem most binding on their consciences respectively; and the depositions having been reduced into writing, and subscribed by the judge, shall be filed of record; and in case any person so cited shall refuse or wilfully neglect to appear and be sworn, or, being Quakers, Moravians, or others exempted as aforesaid, to affirm, and be examined, the judge shall be empowered to punish such persons so refusing or wilfully neglecting, as for a contempt, by fine and imprisonment.

XXXVIII. And it is hereby enacted, that no person shall be excluded from giving evidence in any suit or other proceeding in any of the said civil courts by reason of his being interested in the subject of litigation, or in the event of the suit.

XXXIX. And it is hereby enacted, that the judge shall order and decree to every witness appearing before him upon a subpœna, such reasonable sum of money for his expenses as he shall think fit, whether such witness shall be examined or not, to be paid by the party at whose request the said subpœna shall have issued; and if the said sum of money shall not be forthwith paid or secured to such witness to the satisfaction of the said judge, the said party shall be compelled to pay the same by such ways and process as are hereinafter provided for enforcing the payment and satisfaction of money recovered by judgment, sentence, or decree of the said judge.

XL. And it is hereby enacted, that the judges of the said courts shall in all cases make decrees which shall be agreeable to equity and good conscience, following the laws which have been, or shall be, enacted specially for the said settlements by the Imperial Parliament or by the government of India, and the law of England, so far as it has been held by the Court of Judicature heretofore existing to be applicable, or may be held to be applicable upon the principles laid down by that court in its decisions.

XLI. Clause 1. And it is hereby enacted, that in every decree the judge shall order how much of the amount of any fees which may have been paid or be payable to any attorney or barrister shall be reckoned as costs between party and party, and what other expenses incurred by the parties in prosecuting or defending the suit shall be reckoned as costs in the suit; and shall order in his decree which party shall pay costs to the other, and to what amount.

Clause 2. Provided, that no fees which may have been paid or be payable to any attorney or barrister shall be reckoned as costs between party and party, unless the judge shall be satisfied that the assistance of such attorney or barrister was reasonably required.

XLII. And whereas it is expedient that inconsiderate litigation should be discouraged,

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couraged, and that those who sue or defend inconsiderately should contribute towards the expenses of the judicial establishments, it is hereby enacted, that in every suit in each and every of the said courts the party or parties against whom the decree is made shall, if plaintiff or plaintiffs, pay a fee equal to of the value claimed in the plaint, and if defendant or defendants, a fee equal to of the value decreed; provided, that the judge may remit such fee if he shall be satisfied that the party or parties against whom the decree is made had reasonable ground for suing or defending.

XLIII. And whereas it is expedient that parties to suits and their agents who prevaricate, or wilfully make false statements, should be punished, it is hereby enacted, that whenever the judge is satisfied that any party to a suit, or any agent, in one of the said courts has prevaricated or wilfully made a false statement, he may in his decree impose upon such party or agent a fine not exceeding and in default of payment may order such party to be imprisoned for a period not exceeding .

XLIV. And it is hereby enacted, that all fees and fines levied under this Act by each of the said courts shall be paid monthly into the treasury of the East India Company for the settlement at which such court is held.

XLV. And it is hereby enacted, that every judge of each of the said courts shall be empowered to award and issue a writ or writs, or other process of execution, directed to the sheriff, commanding him to seize and deliver the possession of the houses, lands, or other things recovered in and by judgments, sentences, or decrees, of himself or his predecessor, or to levy any sum of money which shall be so recovered, or any costs which shall be so awarded, as the case may require, by seizing and selling so much of the houses, lands, debts, or other effects, real and personal, of the party or parties against whom such writ or writs shall be awarded, as will be sufficient to answer and satisfy the said judgments, or to take and imprison the body or bodies of such party or parties until he, she, or they shall make such satisfaction, or to do both, as the case may require: And it is hereby enacted and appointed, that the several debts to be seized as aforesaid, shall from the time the same shall be extended and returned into the said court, be paid and payable in such manner and form as the judge in each case shall appoint, and no other, and such payment, and no other, shall from thenceforth be an absolute and effective discharge for the said debts and every of them respectively.

XLVI. And the several judges are hereby authorised and empowered to make such further and other interlocutory rules and orders as the justice of the proceeding may seem to require in each case.

XLVII. And it is hereby enacted, that when a judge of any of the said courts shall be satisfied by the return to the said writ of summons or warrant of arrest that the defendant in any suit before him is not to be found within the said settlements, such judge shall be empowered to award and issue a writ in the nature of a writ of sequestration, directed to the sheriff, commanding him to seize and sequester the houses, lands, goods, effects, and debts of such defendant, to such value as the judge shall think reasonable and adequate to the cause of action, and the same to detain till such defendant shall appear and abide the order of the court, as if he had appeared on the former process; and the judge shall be empowered, according to his discretion, either to cause the said houses, lands, goods, effects, and debts to be detained in specie, or to be sold, and to give a day to such defendant, by proclamation in open court from time to time, not exceeding two years in the whole; and if such defendant shall not appear on the last day which the judge in his discretion shall think proper to give, and the judge shall be satisfied that due diligence has been used on the part of the plaintiff to give notice of such action or actions to the defendant or defendants, it shall be lawful for the judge to proceed, *ex parte*, to hear, examine, and determine the said complaint and suit or cause of action, and to give such judgment thereon, and award and order such costs as aforesaid; and if judgment shall in such case pass for the plaintiff, the judge shall be empowered to award and issue a writ to the sheriff, commanding him to sell the said houses, lands, goods, effects, and debts so seized and sequestered, and to make satisfaction out of the produce thereof to the plaintiff for the debt or sum so recovered, and his costs, and to return the overplus, if any there be, after satisfying the said judgment and costs, and the expenses of the said sequestration, to such person in whose possession the said effects were seized, or otherwise to reserve the same for the use of the said defendant

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defendant as occasion shall require; and if such effects shall not be sufficient to produce the sum so to be recovered, and the said costs, the judge shall have power further to award and issue such process of execution for the deficiency as is hereinbefore provided for levying money recovered by judgment and costs; and if judgment shall in such last-mentioned case pass for the defendant, the judge shall have power to award and order the costs of the said suit, and the expense of the said sequestration, and all the damages occasioned thereby, to be paid by the said complainant to the said defendant or his attorney, or the person in whose possession the said effects were seized, the same to be levied by such process as is hereinbefore provided for levying costs; and the said debts, from the time of their being so seized and extended, and returned into court, shall be payable in such manner as the judge shall direct, and no other.

XLVIII. And it is hereby enacted, that all money, jewels, precious stones, and securities of the suitors of each of the said courts which shall be ordered into court, or to be paid, delivered, or deposited for safe custody, shall be paid, delivered into, or deposited in the public treasury of the East India Company at the settlement at which the court shall be held, to be kept and deposited with the cash, precious stones, jewels, and effects of the said Company, subject to such orders and directions in every case as the judge to whose province it belongs shall from time to time think fit to make concerning the same, for the benefit of the suitors; and each judge shall from time to time order and direct any money belonging to suitors of the court, in cases within his province, to be invested, at interest or without interest, for the purpose of remittance to any place without the said settlement as there may be occasion, for the use and benefit of the parties respectively entitled thereto, on any bills, bonds, or securities of the said Company, or any other bills, bonds, or securities, as such court shall see fit to order and direct; and all executors, administrators, guardians, and trustees whatsoever, acting with respect to such investments at interest or for remittance, under the directions of judges of the courts, shall be indemnified against all risk or loss to be occasioned thereby.

XLIX. And it is hereby enacted, that the treasurer of the said Company at each of the said settlements shall be, and be called, the accountant of the General Court of such settlement, and shall act, perform, and do all matters and things necessary to carry into execution the orders of the several judges of the said court relating to the payment or delivery or depositing of the suitors' money, jewels, precious stones, and securities into or in the said treasury, and taking the same out again, and investing the money of the suitors at interest or for remittance, and keeping the accounts thereof, and for doing such other matters relating thereto, under such rules, methods, and directions as shall from time to time be made and passed by the several judges of the said court.

L. And it is hereby enacted, that in case any person shall have any action or suit against the said East India Company, such person shall be at liberty to proceed therein in like manner as hereinbefore mentioned; and it shall and may be lawful for the chief judge in any such suit or action duly brought in any of the said courts, to issue a summons for the appearance of the said Company, to be served upon the governor or president and the resident counsellor of the settlement in which the cause of action or suit shall have arisen; and thereupon the said governor or president, and such resident counsellor as aforesaid, shall appoint such person or persons to appear and act for the said Company as they shall see fit, and such person or persons shall be admitted to answer and defend such suit in the name and for and on the behalf of the said Company; and the said chief judge shall be at liberty to issue process of sequestration against the lands, tenements, chattels, estate, and effects of the said Company, to compel their appearance and answer; and on non-appearance, or for want of answer of the said Company, to proceed in the same way as the said court might proceed against an individual absent from the said settlement, and on whose behalf, after sequestration of his goods and chattels, no appearance should be entered or answer given; and the said chief judge shall be empowered to try, hear, and determine all such actions and suits in the said courts against the said Company, and to give judgment and costs, and award execution, and do and order all such other matters and things therein, as far as the case will admit, in such manner as herein is mentioned, as to any person or persons whomsoever, subject nevertheless to such right of appeal by either party as herein is mentioned; and in like manner, if the said Company shall have any action or suit against any person or persons, it shall and

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may be lawful to and for the said governor or president and council, or any two of them, the governor or president being always one, to authorise any person or persons for and on behalf of the said Company, and in their name, to make complaint thereof in writing to the court to whose jurisdiction the matter belongs, and the chief judge sitting in such court shall proceed therein, and shall hear and determine the same, as in other cases; and, in case judgment or sentence shall be given against the said Company, shall award costs, to be levied upon the goods and effects of the said Company as they shall see occasion, subject nevertheless to such appeal by either party as herein is mentioned.

LI. And it is hereby enacted, that all causes, suits, and business of ecclesiastical cognizance which shall be brought before the said courts, shall be distributed among the judges, in the manner directed in sections XXIV. and XXV. of this Act, and that the manner of proceeding therein shall be, as near as may be, in conformity with the rules hereinbefore prescribed for all other suits.

LII. And it is hereby enacted, that the chief judge sitting in the General Court of any of the said settlements, and in his absence the first resident judge, shall have full power to grant probates, under his official seal, of the last wills and testaments of all or of any of the inhabitants of the said settlements, and of all other persons who shall die and leave personal effects within the jurisdiction of such court, and to commit letters of administration, under his official seal, of the goods, chattels, credits, and all other effects whatsoever within the said jurisdiction, of the persons aforesaid, who shall die intestate, or who shall not have named an executor resident within the said settlement, or where the executor, being duly cited, shall not appear and sue forth such probate, annexing the will to the said letters of administration, when such persons shall have left a will without naming any executor, or any person for executor, who shall then be alive and resident within the said settlements, and who being duly cited thereunto, will not appear and sue forth a probate thereof; and to sequester the goods and chattels, credits and other effects whatsoever, of such persons so dying, in cases allowed by law, as the same is, and may now be, used in the diocese of London; and to demand, require, take, hear, examine, and allow, and if occasion require, to disallow and reject the account of them, in such manner and form as is now used, or may be used, in the said diocese of London, and to do all other things whatsoever needful and necessary in that behalf.

LIII. Provided always, that the said chief or other judge in such cases as aforesaid, where letters of administration shall be committed, with the will annexed, for want of an executor appearing in due time to sue forth the probate, shall reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor or executors whenever he or they shall duly appear and sue forth the same; and the chief or other judge shall grant and commit such letters of administration to any one or more of the lawful next of kin of such person so dying as aforesaid, and being then resident within any of the said settlements, and being of the age of 21 years; and in case no such person shall then be residing within any of the said settlements, or, being duly cited, shall not appear and pray the same, to any competent officer of the said court, or to such person or persons, whether creditor or creditors, or not, of the deceased person, as the chief or other judge shall see fit.

LIV. Provided, that probates of wills and letters of administration to be granted by the said chief or other judge shall be limited to such money, goods, chattels, and effects as the deceased person shall be entitled to within the jurisdiction of the said court, except in the cases specified in section XIX.

LV. And it is further enacted, that every person to whom such letters of administration shall be committed, shall, before the granting thereof, give sufficient security by bond, to be entered into with the said Company, for the payment of a competent sum of money, with one, two, or more able securities, respect being had in the sum therein to be contained, and in the ability of the sureties, to the value of the estate, credits, and effects of the deceased; which bond, if administration shall be granted to an officer of the said court, shall be deposited in the public treasury of the said settlement; and if granted to any other person or persons, shall be deposited in the said court, among the records thereof, and there safely kept; and a copy thereof shall be also recorded among the proceedings of the said court.

LVI. And the condition of the said bond shall be to the following effect:—That

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That if the above bounden administrator of the "goods, chattels, and effects of the deceased do make, or cause to be made, a true and perfect inventory of all and singular the goods, credits, and effects of the said deceased, which have, or shall come to the hands, possession, or knowledge of him the said administrator, or the hands or possession of any other person or persons for him, and the same so made do exhibit, or cause to be exhibited, into the General Court (of Singapore, Prince of Wales' Island, or Malacca, as the case may be), at or before a day therein to be specified; and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the deceased at the time of his death, or which at any time afterwards shall come to the hands or possession of such administrator, or to the hands or possession of any other person or persons for him, shall well and truly administer, according to law; and further shall make, or cause to be made, a true and just account of his said administration at or before a time therein to be specified, and afterwards from time to time as he, she, or they shall be lawfully required; and all the rest and residue of the said goods, chattels, credits, and effects which shall be found from time to time remaining upon the said administration accounts, the same being first examined and allowed of by the said chief or other judge, sitting in the said court, shall and do pay and dispose of in a due course of administration, or in such manner as the said court shall direct, then this obligation to be void and of none effect, or else to remain in full force and virtue." And in case it shall be necessary to put such bond in suit for the sake of obtaining the effect thereof for the benefit of such person or persons as shall appear to the said chief or other judge to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit, or any part thereof, such person or persons shall, by order of the said chief or other judge, be allowed to sue the same in the name of the said Company; and the said bond shall not be sued in any other manner; and the said chief or other judge shall be empowered to order that such bond, as aforesaid, shall be put in suit in the name of the said Company.

LVII. And it is hereby enacted, that when probates of wills and letters of administration shall be granted as aforesaid, certain periods shall be fixed, within which the persons to whom they shall be granted shall from time to time, until the effects of the deceased persons shall be fully administered, pass their accounts relating thereto before the chief or other judge in the said court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed, then or at any earlier time, if the said chief or other judge shall see fit so to direct, the person or persons to whom such probate or administration shall be granted shall pay and deposit the balance of money belonging to the estate of the deceased then in his, her, or their hands, and all money which shall afterwards come into his, her, or their hands, and also all precious stones, jewels, bonds, bills, and securities belonging to the estate of the deceased, into and in the treasury of the said Company, in the name of the treasurer, as accountant of the court, to abide the orders of the said chief or other judge, or shall otherwise dispose of such money, goods, chattels, and securities as the said chief or other judge shall direct; and the said chief or other judge shall from time to time make such order as shall be just for the due administration of such assets, and for the payment or remittance thereof, or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in the said settlement, who may be entitled thereto, or any part thereof, as creditors, legatees, or next of kin, or by any other right or title whatsoever; and it shall be lawful for the said chief or other judge to allow to any executor or administrator of the effects of any deceased person or persons (except as herein mentioned) such commission or per centage out of his, her, or their assets as shall be just and reasonable, for their pains and trouble therein.

LVIII. Provided always, that no allowance whatever shall be made for the pains and trouble of any executor or administrator who shall neglect to pass his accounts at such time, or to dispose of any money, goods, chattels, or securities with which he shall be chargeable, in such manner as, in pursuance of any general or special rule or order of the said court, shall be requisite: and, moreover, every executor or administrator so neglecting to pass his accounts, or to dispose of any such money, goods, chattels, or securities with which he shall be charged, shall be charged with interest, at the rate to be then current within the said settlement, for

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for such sum and sums of money as from time to time shall have been in his hands, whether he shall or shall not make interest thereof.

LIX. And it is hereby enacted, that in the cases of persons dying in any of the said settlements, and leaving personal effects in more than one of the settlements, applications for probate or letters of administration shall be made to the chief judge only, whenever he shall be holding a court at any of the settlements in which such property may be, and probates and letters of administration granted by the chief judge in such cases shall have force in respect of all money, goods, chattels, and effects which the deceased was entitled to in all or any of such settlements.

LX. Provided, that in the absence of the chief judge, the first resident judge of each of such settlements may take order for securing the property left therein by the deceased, until probate or letters of administration shall be issued by the chief judge.

LXI. And it is hereby enacted, that the chief judge, and in his absence the first resident judge of each of the said courts, shall have authority to appoint guardians and keepers for infants and their estates, within the jurisdiction of such court, according to the order and course observed in England, and also guardians and keepers of the persons and estates of natural fools, and of such as are, or shall be, deprived of their understanding or reason, so as to be unable to govern themselves and their estates, and in such cases to inquire, hear, and determine, by inspection of the person, or such other ways and means by which the truth may be best discovered and known.

LXII. Provided, that when the estates of such incapacitated persons are situated in more than one of the said settlements, the appointment of keepers of such estates shall be made by the chief judge only; but the first resident judge in every such settlement shall take order intermediately for the security thereof.

LXIII. Clause 1. And it is hereby enacted, that appeals from the decrees made by the said courts in original suits shall be allowed, under the following rules and provisions:

Clause 2. In every suit which shall have been heard and determined by the second, or any inferior resident judge of any of the said courts, any party considering himself aggrieved by the decree may appeal to the first resident judge; and in every suit which shall have been heard and determined by the first resident judge, any party considering himself aggrieved by the decree may appeal to the chief judge; and in every suit which shall have been heard and determined by the chief judge, any party considering himself aggrieved by the decree may appeal to the College of Justice at Calcutta.

Clause 3. Provided, that when an appeal shall be made to the first resident judge of any of the said civil courts, raising questions of law, the appeal shall be referred to the chief judge.

Clause 4. Provided also, that it shall be competent to the chief judge to call up and place on his own file any appeal that may be before the first resident judge of any of the said courts involving points which he thinks ought to be determined by himself.

Clause 5. Any party desiring to appeal under this section shall present a petition to the judge, to whom the appeal lies, in person or by an agent, within one month from the date when the decision to which it relates was passed.

Clause 6. Provided, that an appeal shall be admissible, at the discretion of the appeal judge, at any time between one month and three months from such date, upon good and substantial cause being shown for such delay.

Clause 7. Provided also, that when the appeal lies to the chief judge, and he be not present, the petition shall be presented to the judge who passed the decision to which it relates; and that when the appeal lies to the College of Justice the petition shall be presented to the chief judge, or, in his absence, to the first resident judge.

Clause 8. In the petition of appeal, which shall always be accompanied with a copy of the decree, the grounds of appeal shall be distinctly specified; in particular, it shall be declared whether the decree is impugned as being contrary to law, or inconsistent with usage having the force of law, or some practice of the courts, or as against evidence, or because of defects or irregularities in the proceedings before judgment; and if the petition of appeal is not sufficiently explicit, it shall be competent to the judge receiving the petition to examine the party, or his

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his agent, and to cause the petition to be amended according to the explanations given at such examination.

Clause 9. If the grounds of appeal set forth in the petition are obviously insufficient, it shall be competent to the appeal judge, upon the mere perusal thereof, to reject the appeal.

Clause 10. Otherwise the respondent shall be summoned to appear and answer, in person or by an agent.

Clause 11. Upon hearing the answer of the respondent, if the judge is satisfied by it that the grounds of appeal are insufficient, he may reject the appeal.

Clause 12. But a judgment reversing or altering the decree of the lower court shall not be passed without a full consideration of all the proceedings held in the case.

Clause 13. And no decree shall be reversed or altered on appeal if the decree be consistent with the justice, conscience, and equity of the case.

Clause 14. It shall be competent to any judge hearing an appeal under this Act, and not being satisfied that the case has been sufficiently examined, to order the judge who passed the decree to reconsider his judgment, or to order a new trial of the facts by the same, or by another judge.

LXIV. Clause 1. And it is hereby enacted, that a special appeal shall lie to the College of Justice at Calcutta from decisions passed by the chief judge, and by the first resident judges of the said courts respectively, upon appeals heard by them under this Act, which shall appear to be inconsistent with the law applicable to the case, or with some usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice upon which there may be reasonable doubts, under the following rules:

Clause 2. An application for a special appeal shall be presented to the court which passed the decree complained of, within the time limited for the presentation of regular appeals.

Clause 3. Every petition for a special appeal shall be accompanied with copies of the several decrees passed in the case, and the petition shall state precisely the point or points of law, usage, or practice, in regard to which the decree of the first appellate court is impugned.

Clause 4. The petition shall be heard in the first instance by a single judge of the College of Justice, and if it shall appear to him that an appeal is not admissible on the grounds stated therein, he shall immediately reject it; if it shall appear to him, on the contrary, that the appeal is admissible, he shall pass an order accordingly, and shall direct the respondent to be summoned, at the same time certifying the points to be determined.

Clause 5. In every case of special appeal admitted as aforesaid, the College of Justice shall determine the point or points certified as above directed, and no other point or part of the case whatever.

Clause 6. And it is hereby provided, with respect to both regular and special appeals to the College of Justice, that when the petition of appeal shall be presented after the term of one month from the date of the decree, but within the term of three months, the lower court shall receive the petition, and in forwarding it to the College of Justice shall express an opinion upon the causes assigned for the delay.

LXV. Clause 1. And it is hereby enacted, that criminal justice shall be administered by the courts hereby established, after the following manner:

Clause 2. The said chief judge shall from time to time hold a court of oyer and terminer and gaol delivery in and for each of the said settlements, and shall hear and determine, by the oaths or affirmations of a jury of good and sufficient men, or of the major part thereof, all treasons, murders, and other crimes done or committed within such settlement, subject by law to the punishment of death, without presentment or indictment by a grand jury.

Clause 3. And the said chief judge holding a court of oyer and terminer and gaol delivery as aforesaid is hereby empowered, without presentment or indictment by a grand jury, and without any inquest or jury, but with the aid of three assessors, to inquire of, hear, and determine all crimes and offences not subject by law to the punishment of death, but subject by law to imprisonment for life, or for 14 years, or for any longer term, or to transportation for any term.

Clause 4. And the first resident judge of each settlement shall hold a court as often as there may be occasion for the trial, with the aid of three assessors, of crimes,

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crimes, offences, and misdemeanors subject to a less punishment than any of the punishments aforesaid, but beyond the jurisdiction hereinafter assigned to the magistrate.

Clause 5. In every case tried by the chief judge, or any other judge, with the aid of assessors, the assessors shall be sworn, or shall make a solemn affirmation, to give a true opinion according to the evidence, and the judge shall sum up the evidence on both sides, and the assessors shall thereupon state their opinions *seriatim*; but the judge having heard and considered their opinions, shall pronounce the accused guilty or not guilty upon his own opinion, and shall pass sentence accordingly; the opinions of the assessors shall, however, be stated on the record.

Clause 6. And when in any case under trial by the first resident judge of any settlement it shall appear by the evidence that the crime committed is liable to a sentence which can be passed by the chief judge only, the said judge shall quash the proceedings, and shall order the case to be reserved for trial by the chief judge.

Clause 7. Likewise in any case committed for trial before the first resident judge, if it shall appear on a perusal of the proceedings before the magistrate that the case is one which ought to be tried by the chief judge, he shall order the case to be reserved for trial by him.

Clause 8. And in any case tried by the first resident judge of any settlement in which he has found the accused guilty, if a doubtful point of law is involved in the case, it shall be competent to such judge to refer the point for the opinion of the chief judge, and he shall pass sentence according to the opinion delivered by the chief judge on such reference.

Clause 9. And the chief judge and other judges aforesaid respectively shall from time to time, as there may be occasion, issue their warrant or precept to the sheriff of the settlement, commanding him to summon a convenient number, to be therein specified, of the inhabitants or persons commorant at the settlement to serve as jurors on the trial of all persons charged with crimes to be tried by a jury, and other persons of the same description to serve as assessors in cases to be tried with the aid of assessors; and if any person or persons summoned to serve as jurors or assessors as aforesaid shall refuse or neglect to attend according to such summons, or to be sworn, or to make the affirmation required of them, or shall make other default, the said chief judge and other judges respectively shall be empowered to punish such contempt by fine and imprisonment for a reasonable time to be limited, or by both; and the said chief judge and other judges shall be empowered, in like manner and under the like penalties, to cause all such witnesses as justice shall require, to be summoned, and to administer to them, and each of them, the like oaths and affirmations as may be administered to witnesses in civil suits under this Act, and to proceed to hear, try, and determine the crimes and offences upon which persons are charged before them, and to give judgment thereupon, and to award execution thereof, and in all respects, except in so far as it is otherwise provided by this Act, to administer criminal justice in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as the courts of oyer and terminer do or may in England, due attention being had to the several religions, manners, and usages of the native inhabitants.

Clause 10. And the second resident judge of each of the said settlements shall be magistrate and superintendent of police and coroner in and for the said settlement; and the resident judge in Province Wellesley shall be magistrate and superintendent of police and coroner in and for the said province.

Clause 11. And such magistrate shall be vested with all the powers of justices of the peace in England, for the purpose of keeping the peace, and for pursuing and arresting and bringing offenders to justice, and for doing all other acts which by virtue of any law or statute now in force in the said settlements may lawfully be done by a justice of the peace therein.

Clause 12. And such magistrate as coroner shall exercise the like powers, authorities, and jurisdictions as by law may be exercised by coroners elected for any county or place in England; provided, that he may hold an inquest with a jury consisting of any number of persons not less than three.

Clause 13. And such magistrate shall hold a preliminary investigation in cases of a nature to be tried by the chief judge, or by the first resident judge, and shall commit the persons accused, or hold them to bail to take their trial in due course,

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or shall discharge them; and shall hold a court from time to time as may be necessary for the trial and punishment, by himself, in such summary way as may be most consistent with the attainment of substantial justice, of crimes, offences, and misdemeanors, subject to a punishment not exceeding ordinary imprisonment for six months, or a fine of 200 rupees; and shall have power in like manner, and under the like penalties as aforesaid, to summon witnesses, and to administer oaths and affirmations to them, and to punish contempts.

Clause 14. And the Governor of Bengal is hereby empowered to grant commissions, or to authorise the governor or the resident counsellor in any of the said settlements to grant commissions, to any servants of the East India Company or other inhabitants of the settlement, to assist the said magistrate in his executive functions, and to be his deputies in the office of coroner, and therein to exercise the same powers as he is hereby authorised to exercise, in concurrence with him and under his direction.

Clause 15. And the Governor of Bengal shall give such orders as he shall deem meet for the appointment of constables and subordinate peace officers, to perform the duties usually performed by such officers in England, under the direction and control of the said magistrate.

Clause 16. And the said magistrates and assistants to magistrates, and all constables and peace officers shall be subordinate to, and all their acts and proceedings shall be liable to be inquired into, annulled, corrected, and dealt with by the chief judge of the said settlement, and by the like method and process, as near as may be, as justices, magistrates, and peace officers are subordinate to the Court of Queen's Bench in England.

Clause 17. And it is hereby provided and declared, that the courts hereby established shall not be competent to hear, try, and determine any charge against the chief judge, nor any charge not being for treason or felony against the governor or any of the councillors.

Clause 18. And it is hereby provided, that any charge which may be brought against any judge other than the chief judge, or against any magistrate, shall be heard, tried, and determined by the chief judge only.

Clause 19. And for every sentence or order passed in a criminal trial, or in any proceeding other than a trial in a criminal case by a magistrate, there shall be permitted an appeal to the first resident judge, within one (1) week from the date of such sentence or order, which shall be decided by the said judge, or, if it shall involve a doubtful point of law, shall be reserved by him for the decision of the chief judge.

Clause 20. And in all cases tried by the chief judge or first resident judge of any of the said settlements, with the aid of assessors, in which any person has been convicted by the judge against the opinion of the assessors, or of the majority of them, or in which the conviction is challenged by such person as wrong in point of law, the person convicted may appeal, if the trial was held by such first resident judge, to the chief judge, and if it was held by the chief judge, to the College of Justice at Calcutta.

Clause 21. Provided, that such appeal to the chief judge shall be made within one month, and shall be delivered to the chief judge in person, if he is sitting in the court of the settlement, or to the judge by whom the appellant was convicted; and that such appeal to the College of Justice shall be made within one month, and shall be delivered to the chief judge in person, if he is sitting in the court of the settlement, or to the first resident judge of the settlement.

Clause 22. And provided, that if such appeal be made upon a pretence which is obviously groundless, it shall be at once rejected by the judge to whom it is delivered; but a record shall be made of the reasons for rejecting the appeal, for the inspection of the chief judge at his next visit.

Clause 23. And in all cases tried by a jury, the chief judge shall have full and absolute power and authority to allow or deny an appeal made by any party pretending to be aggrieved by the conviction of the jury, and to order and regulate the terms upon which such appeal shall be allowed when he shall think fit to allow an appeal; and when such an appeal is allowed, it shall be heard by the College of Justice at Calcutta.

Clause 24. And it shall be competent to any and every court hearing an appeal, under any of the provisions hereinbefore contained, from a sentence or order passed in a criminal trial, or in any other criminal proceeding, to affirm or annul the sentence or order, to order a new trial of the whole or any part of the case, or

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to order the lower court to reconsider the finding and sentence; and in case of the dismissal of the appeal, or affirmance of the conviction, to order the appellant to pay such costs as may be deemed proper, and in case of non-payment of the same, to order, in addition to the first sentence, simple imprisonment, not exceeding two months.

Clause 25. And it shall be competent to the chief judge of the said settlement to call for the record of any criminal trial or proceeding held before any of the resident judges or magistrates, and to the College of Justice at Calcutta to call for the record of any trial or proceeding held before the said chief judge, and thereupon respectively to pass such orders as may seem fit; provided, that the punishment ordered by the lower court shall in no case be enhanced, and that punishment shall not be inflicted upon any person acquitted by the court below.

LXVI. And it is hereby enacted, that no sentence of capital punishment, or of transportation, or of corporal punishment, shall be carried into execution pending an appeal; and that it shall be competent to every court to respite or reprieve the sentence passed by such court upon any person convicted of any offence by or before it, and to substitute any lesser punishment than that to which such person shall have been sentenced, and during the respite or suspension of the execution of any sentence to cause the person convicted to be kept in strict custody, or to deliver him to bail, as the circumstances shall seem to require.

LXVII. And it is hereby enacted, that it shall be competent to the chief judge, on any occasion when he shall think fit, to refer any case to the consideration of the College of Justice, to reprieve and suspend the execution of any sentence, capital or otherwise, until the orders of the said College of Justice shall be received; and the chief judge shall in such case transmit to the College of Justice a statement of the case, of the evidence, and of the reason of such reprieve or suspension, with an authentic copy of all the proceedings in such case, for their determination thereon; and it shall be competent to the chief judge in the meantime to cause the person sentenced to be kept in strict custody, or to deliver him out to bail, as the circumstances shall seem to require.

LXVIII. Provided always, that it shall be competent to the Governor of Bengal to extend mercy and to grant pardon to any person upon whom any sentence shall have been passed, and to allow of the return of any person who shall have undergone the sentence of transportation.

LXIX. And it is hereby enacted, that it shall be competent to each and every of the said judges and magistrates to order satisfaction to be made to any prosecutors for any crimes committed or contempts incurred, as to him shall seem reasonable and fit, out of any fine or fines to be set or imposed upon any person or persons who shall be convicted before and fined by him; and that such fines shall be paid according to such order to be given by the said judge or magistrate.

LXX. And it is hereby enacted, that any writ, warrant, or other process issued by any judge or magistrate of any of the courts hereby established, may be executed within the jurisdiction of any other of the said courts, in manner following: A copy of such writ, warrant, or other process, authenticated by the attestation of the judge or magistrate issuing the same, shall be transmitted by such judge or magistrate to any judge of the General Court for the settlement in which the process is to be executed, who upon the receipt thereof shall endorse the process and direct it to be executed by the sheriff of the settlement, in the same manner and subject to the same rules as if it were a process issued by the said court; and all persons disobeying or obstructing the execution thereof shall be punishable by the said judge as for disobedience or obstruction of process so issued.

LXXI. Provided, that the judge to whom any such process shall be transmitted for execution as aforesaid may return the same for amendment, if it shall appear to be defective in form.

LXII. And provided, that the judge to whom any writ, warrant, or other process for the seizure or detention of any person shall be transmitted for execution as aforesaid, shall have authority, by his endorsement thereon, to direct that bail may be taken, specifying in such endorsement the amount and number of sureties,

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and for this purpose to call for such documents and to make such inquiry as he shall think proper.

LXXIII. And it is hereby enacted, that the Governor of Bengal shall determine and order whether any and what oaths, or affirmations, shall be taken or made, and in what manner, by the sheriffs, coroners, and other officers who shall be appointed under this Act.

LXXIV. And it is hereby enacted, that a table of the fees to be taken in the said courts for any business to be done therein shall be settled by the Governor of Bengal, and shall be varied from time to time, at the discretion of the said Governor, subject always to the approbation and correction of the Governor-general of India in Council; and provided, that the table of fees which shall be in force in the court of judicature of Prince of Wales' Island, Singapore, and Malacca at the time when this Act shall come into operation, shall be observed in the courts established by this Act until a new table of fees shall be settled as aforesaid.

LXXV. And it is hereby enacted, that indictments, informations, actions, suits, causes, and proceedings, depending in the said court of judicature and courts of requests, which by this Act are abolished, whether originally instituted in such court, in any branch of its jurisdiction, or transferred from any other court or courts, shall not by such abolition be abated, discontinued, or annulled, but the same shall be transferred in their then subsisting condition respectively to, and shall subsist and depend in, the said courts hereby established, according to the several jurisdictions hereby given to such courts severally and respectively, to all intents and purposes, as if they had been respectively commenced, brought, found, presented, or recorded in the said courts hereby established, and the said courts hereby established are authorised and empowered to proceed accordingly in all such indictments, informations, actions, suits, causes, and proceedings to judgment and execution, and to make such rules and orders respecting the same, and also respecting any sum or sums of money belonging to the suitors of the said court of judicature and courts of requests, as the said courts might have made, or as the said courts hereby established are empowered to make in causes, suits, or proceedings commenced or depending before the said courts hereby established; for which purpose it is enacted, that all the records, muniments, and proceedings whatsoever, of or belonging to the said court of judicature or courts of requests, or which ought to be deposited with such courts respectively, shall be delivered and deposited and preserved amongst the records of the general courts of Singapore, Prince of Wales' Island, and Malacca.

LXXVI. And it is hereby enacted, that the chief judge, with the resident judges of the General Courts of Singapore, Prince of Wales' Island, and Malacca, hereby established, shall frame such process, and make such rules and orders for the execution of the same in all suits to be commenced, sued, or prosecuted, and in all criminal proceedings within their jurisdiction, as shall be necessary for the due execution of all or any of the powers hereby committed thereto, and shall make such rules with respect to the qualification, appointment, form of summoning, challenging and service of jurors and assessors, as they may deem expedient and proper, with an especial attention to the different religions, manners, and usages of the persons who shall be resident or commorant within their jurisdiction, and accommodating the same to their several religious, manners, and usages, and to the circumstances of the country, so far as the same can consist with the due execution of law and the attainment of substantial justice.

LXXVII. Provided always, and it is further enacted, that all forms of processes, and rules and orders for the execution thereof, which shall be framed by the said courts, shall be transmitted to the College of Justice at Calcutta, to be by the said College of Justice communicated, with their observations, to the Governor-general of India in Council, for correction, approbation, or refusal; and such process shall be used, and such rules shall be observed, until the same shall be repealed or varied by the Governor-general of India in Council.

(signed) *J. C. C. Sutherland*, Secretary.

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Legis. Cons. 30 Dec. 1842. No. 5.

Legis. Dep.

From *C. R. Prinsep*, Esq. Officiating Advocate-general, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, dated the 11th August 1842.

Sir,

I HAVE now the honour to forward my reply to the reference made to me by yours of date 17th June last, of the Report on the Judicial Establishment in the Straits by the Law Commissioners, bearing date the 8th February last.

An unusual pressure of public business must afford my excuse for the delay of my reply to the above reference.

I have, &c.
(signed) *C. R. Prinsep*,
Officiating Advocate-general.

(Legislative Department.)

Judicial Establishment in the Straits Settlements.

OPINION.

THE plan suggested in the Report of the Law Commission for improving the administration of justice in the Straits settlements, and reducing the disproportionate expense of the existing establishment, appears to me to be in most respects calculated to effect the objects in view. But there are some points in which I think it erroneous or defective; and these I will point out with as much brevity as I can, in the order in which they are summed up in the Report.

1st. I think the grand jury may well be dispensed with as an indispensable preliminary to the trial of criminal cases by the petty jury. The number of residents of the different settlements qualified to act as grand jurors is much too small to admit the employment of so voluminous an instrument of investigation on every occasion of a criminal charge; and it seems to me that the previous inquiry may, in 99 cases out of 100, be safely entrusted to a paid and responsible magistrate, provided he be a person of some legal experience. But I think it would be most unwise to abolish the grand jury altogether.

First. Because it would leave an accusing party no redress whatever in the probable case of mistake or prejudice, and possible case of caprice or undue bias of the magistracy, which in each of the different settlements will be vested in a very limited number, if not in a single person; and that with little or no check from public opinion, and far removed from the eye of the controlling authority.

Second. Because there are other functions that a grand jury may perform with infinite advantage to the public, and for which there could be no other body to look to—the presentment of public nuisances or grievances, the suggestion of public works or improvements, and the like. Besides, a grand jury properly constituted would materially strengthen the hands of government in settlements so remote, and so ill policed and protected as those in question. It would, moreover, afford the means of the only practicable classification of the inhabitants, and hold out a distinction that would be eagerly grasped at by the Asiatic and demi-Asiatic portions of society. I would preserve the institution of the grand jury, if for no other reason than as being the only constitutional germ of political institutions that for a long time to come will be available in those settlements for any purposes of advancement; and I would give it, amongst others, the power of inquiry and presentment of such criminal charges as might have been rejected by the magistracy. I would, moreover, make the members of the grand jury list liable to serve as special jurors (or assessors) only when such should be required; but I think a considerable reduction might well be made in the number requisite to hold an inquisition in England, and that the periodical meetings of the grand jury should be less frequent than those of the regular sessions of the Criminal Court.

I think, also, that in the present condition of the settlements the petty jury also may with advantage be curtailed of its number, but not to such an extent as a reduction to three jurors or assessors only: the number three would, in cases of difference of opinion, give a majority of one only. It seems to me that four would be the lowest number to which the jury, as I would still call it, could be

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reduced, with regard either to the safety of the individuals composing it, or to the general acquiescence in their verdict. The number four would ensure a majority of three to one; and as to the inconvenience of equal division of opinion, it would be obviated by discharging the jury so equally divided, and calling of another, which, if equally divided, should entitle the accused to acquittal.

But the most objectionable items in the present scheme, and indeed in that recommended by the prior Report of 30th August 1838, referred to and embodied in the Report now submitted to me, are, 1st, the limitation of the powers of the jury or assessors; and, 2d, the mode in which they are to exercise their functions.

First, By leaving to the judge, as proposed by the Law Commission, the decision of the fact as well as the law, it appears to me that they have wholly lost sight of the grand advantage of the jury system,—the separation of the cognizance of law from that of fact. Herein consists the very essence of jury trial. It renders the judges of both the one and the other more careful and more expert; it teaches them to respect each the other; and the division of their respective responsibility renders the public better able to estimate the manner in which the duty of each has been performed. Besides, it is not correct to assume that the opinion of a professional judge on questions of fact is generally preferable to that of practical men of the world. Experience leads invariably to the contrary conclusion. It is rare to find professional judges who are what may be called good jurymen. So long as I have practised at the Indian bar, I can hardly say that I remember more than one judge who, in matters of facts, was more than an average juryman. Moreover, the plurality of the jury, even of the reduced number, gives it in this respect a great advantage over a single judge, as it necessarily combines more extensive and various knowledge of habits and character, the value of which is the more to be coveted when the professional judge is a new comer, as he usually will be in these settlements.

To give the power to the presiding judge of overruling the finding of the jury, is to destroy all consciousness of independence and responsibility in the jurymen —to render the office not only thankless, but degrading—to promote the arrogance of the judge, and ensure the listlessness or subserviency of the jurors—instead of dividing responsibility, and giving to the result the united weight of a double tribunal. The effect of this innovation would inevitably be to make the verdict, in the eyes of the accused and of the public, the act of a single man. I look upon it that it was this mistake that has all but nullified the attempt made in the time of Lord William Bentinck to introduce a sort of juries, or punchayets, in mofussil proceedings, by Reg. VI. of 1832, which has proved little more than a dead letter.

Second. The mode in which, according to the plan of the Law Commision, the juries (or assessors) are to exercise their functions, appears to me very faulty, and likely to impede the course of justice. Each is to give a separate opinion, which the professional judge is to note or minute. If this is to take place in public court, it will point out to the accused and his partisans those amongst his judges who favour and those who condemn; thus making the individual jurors a mark of dislike, or even revenge, which is no slight matter in a Malay or Chinese community. If the discussion is to take place apart, it will, in case of difference, degenerate into debate between judge and jurymen.

For these reasons it seems to me far better to abide by the English system, that has stood the test of ages, and is still pre-eminent in its practical result above the newfangled innovations which have presumed to improve upon it. The jurymen should be subject to challenge by the accused on the ground of favour or affection; and the jury should be sole and independent judges of the fact, with no other power in the judge than to award a retrial under certain circumstances; and their verdict should be delivered as the verdict of the whole, so that the odium or popularity of it should never rest on the individuals. This is what is called unanimity of the jury, which is usually more apparent than real. The decision even on the English plan is generally that of the majority, though delivered as the finding of the whole body; and when the minority has prevailed, it has always been on the side of mercy or indulgence.

The fifth proposition of the Law Commission, for giving fixed salaries in lieu of fees, may, I think, be modified with advantage. Judicial officers, and those whose duties are merely mechanical, may, and perhaps ought to be thus remunerated; though even such officers are found to grow inert in their duties in the absence of any stimulus for exertion or attention; but the zeal and diligence of executive duties

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duties can only be ensured by reward proportionate to the object. Sheriffs should be remunerated by poundage; official administrators and receivers by commission. The departure from this principle in the case of receivers and some other court officers, in the late arrangement of the Supreme Court here, has been found to work so ill that it will probably before long be made a subject of representation.

I concur entirely in the propriety of adhering to the English language as the court language, and to the English law as the law of the Straits settlements. Malays form scarcely half of the local population, and that not the most industrious or wealthy.

A very large proportion of the business of the courts, both civil and criminal, especially at Singapore, is with mere commercial and seafaring visitors; and the population, both of Singapore and Penang, are all mere settlers, who have voluntarily resorted to British settlements in the full expectation, perhaps the hope, of finding English law and English courts there established.

I cannot conclude these few remarks without expressing my disappointment at finding in the scheme of the Law Commission no provision for the introduction of the jury principle, in any form, into the civil court. Even in the Supreme Court of this presidency, with its plurality of judges, the presence of a jury has always been a desideratum, and has been felt and declared so to be by judges as well as by the legal profession and the public. The want of it must be the more sensible where the bench will consist of a single judge, with very little check of public opinion. Its introduction with the requisite modifications would be hailed by the residents of the Straits as a gift of infinite price; and no occasion can be more appropriate for it than the moment of an entire revision and remodelling of the judicial establishment. The reduced scale of remuneration will of course diminish the chances of efficiency on the bench, and render the presence of an effective check and support, like that of a jury, more requisite and important.

(signed) *C. R. Prinsep*,
Officiating Advocate-general.

Old Post-Office-street, 11 August 1842.

Legis. Cons. 30 Dec. 1842. No. 6. Straits Settlement.

MINUTE by the Honourable *A. Amos*, dated the 15th August 1842.

I VERY much regret, in consequence of circumstances unforeseen at the time, that the draft Act which I prepared, and which passed Lord Ellenborough and the Council in the beginning of last April, had not been published. It might at this time have become law, and a great saving to the pecuniary resources of the Company have been effected. The draft Act of April contained all the material changes in the constitution of the courts, and in the functions of judges and magistrates; about these matters but little difference of opinion may be expected. The April draft omitted the procedure, which might have been added at any subsequent time, the courts in the meantime going on with the forms of procedure to which they were accustomed. About the procedure much difference of opinion may be expected. It will be collected from the Advocate-general's Report, that the differences of opinion on the subject of procedure are various and important. I fear that the settling of the procedure will still delay the passing of the Act for a long time.

The reason why the April draft was not published, was, in consequence of my representation that it would give offence to some members of the Commission, who attached great value and importance to particular rules of procedure, especially as regards assessors; and I certainly understood in the Commission that those who felt an interest in the procedure being included in the draft Act would be able to draft an Act containing the whole procedure in a week or two. Four months have elapsed since that time; but it is very necessary to observe that during the greater part of this period the Commission has been occupied in answering a private reference from Lord Ellenborough on some important matters connected with the administration of justice in India. The Report sent to Lord Ellenborough is now before the Council, as it embraces some matters on which the Supreme Government had previously consulted the Commission. It is to be observed also, that during the same period Lord Ellenborough has imposed on one of the Commissioners (the gentleman who felt particular interest in various parts of the procedure) a very onerous and difficult task, the investigation of the political and military transactions of Affghanistan.

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Having given this explanation of a delay which I conceive might be complained of by the home authorities, I proceed to notice the Advocate-general's remarks. It should be premised that the Advocate-general has some local knowledge of the Straits settlements, which may add weight to his opinions when they refer to local considerations.

1. *Grand Juries.*—If it be settled that the petty jury may proceed to try in a commitment without obliging prosecutors to tell their story three times, and to give three attendances, the main reform will be accomplished. I see no objection, but rather an advantage, in a grand jury sitting two or three times a year for the purposes mentioned by Mr. Prinsep; their duties will be comparatively very light, and the call on their time will be much diminished. The grand jury might properly be curtailed in number.

2. *Petty Jury.*—Whether it consist of three or four, I do not think of much importance.

3. *Assessors.*—I agree in all that the Advocate-general says about assessors. I have not raised any controversy about assessors in the Commission, being willing that the authorities in the Straits should have the assessor system laid before them. About its success in Ceylon, I think the answers we received were discordant; but it is extremely important to observe that in Ceylon some of the assessors are paid. Upon general principles, and with regard to the common feelings of mankind, I should be decidedly opposed to the assessor system, unless the Straits' authorities were much in favour of it. The Advocate-general, with his experience of the Straits, sees only local considerations against it, independently of general views.

4. *Salaries and Fees.*—I believe it has been found in England that the payment of Masters in Chancery and other officers by salaries is a failure; the subject is under consideration of the Council for all the Supreme Courts.

5. *Juries in Civil Suits.*—I incline to think that it would not be advisable to introduce juries in civil suits immediately. If they should be introduced into the Supreme Courts of India, it may be proper to introduce them in the Straits.

6. I would erase from the draft to be published, the words "equity and good conscience." There are various other matters of procedure which I have acquiesced in, only for the purpose of offering them to public discussion, but which I do not entirely approve.

(signed) *A. Amos.*

Legis. Cons. 30 Dec. 1842. No. 7.

MINUTE by the Honourable *H. T. Prinsep*, dated the 17th September 1842.

I FIND it by no means an easy matter to give in small compass an opinion upon the Report and draft of Act submitted by the Law Commission for remodelling the courts of the Eastern settlements. Each point of the Report ought in fact to be separately stated and discussed; and then, according to the opinion given, the particular sections of the draft of Act, based on the principle so discussed, should be cited, with the specific modifications and amendments requisite to carry out the view preferred. But this would lead to very great length, and must prove a waste of time, until the decision of the government and of the home authorities should be passed on the broad features of the scheme to be substituted for that in force. I shall at present, therefore, treat the subject as if we were merely deciding on the general plan, leaving the details of the draft of Act recently submitted to be dealt with hereafter.

We are all agreed, as well in India as in England, as to the cumbrous inaptitude of the present institutions and forms of administration to the state of things in the Straits. We are agreed that something should be substituted for them, subordinate to the courts and government of Calcutta, but with sufficient authority to quell local disorders and keep down crime, and to decide promptly all the disputes which arise concerning property, as well as all offences against either property or person, saving only those punishable with death.

Now the devising of a new scheme of judicial administration not based upon, or merely in amendment of the existing, but to be substituted entirely for it, opens all the great as well as small questions which surround the much-argued subject, How best to provide substantial justice to a mixed community? What forms of administration are at once the cheapest and best, combining efficiency with due security against abuse and partiality?

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The Law Commission have been called upon, and have submitted a scheme complete in all its parts. The discussion with us is therefore limited to the consideration of this scheme, but when determining whether to accept it wholly or in part, and what parts to approve and what to modify, there is still wide enough ground to include all the great questions of judicial policy. I shall endeavour to avoid argument upon them, however, as much as possible, and shall confine myself to simply stating the main features of the scheme, with my opinion upon each in succession.

First, The existing court being abolished, it is proposed to have for the three settlements of Penang, Malacca, and Singapore, one chief judge, salaried at 17,500 rupees per annum, who shall be a barrister appointed by the Governor-general in Council.

I approve of this proposition, but think it will be inconvenient to fix the salary in the Act. It will be better to leave the salary to be fixed with the sanction of Her Majesty in Council, as communicated through the Board of Commissioners for the Affairs of India, and not to be altered after being so fixed without like sanction.

Second, Besides the chief judge, there are to be local subordinate judges for each station or settlement, the number to be fixed by the Governor-general of India in Council, who also is to settle all their salaries. The executive officers of the settlements may be of the number of these, and each judge is to have a separate seal.

Upon this I would merely remark, that no place is assigned by this arrangement to the governor or head civil officer of the three settlements, unless he be made a subordinate or assistant to the barrister judge, salaried at 17,500 per annum. Now the head officer of the Straits settlements must ordinarily be a trustworthy, confidential officer, capable of rendering good service in the administration of justice, and salaried at 2,000 or 3,000 per mensem. Such an officer cannot well be reduced to the position of assistant to the barrister judge, receiving causes from him, and with his decisions liable to be reversed on appeal.

The executive, therefore, must be a separate authority from the judicial, which will be expensive unless the barrister be also made governor, which does not seem to be contemplated. The existing charter of justice for the Straits settlements makes the governor a fellow-judge and the first on the bench, and so enables him to sit with the barrister judge, acting as something more than an assessor, and, in the absence of the barrister judge, entitled to hold the court separately, with nearly the same authority and effect.

I see no harm, but rather good, in the working of this part of the existing scheme, and I would suggest that a power be given to the Governor-general in Council to associate one or more of the public officers with the barrister chief judge, not as subordinates but as equals, so as to leave a place in the administration of justice to a high civil officer, if such should hereafter be appointed.

Section XII. leaves the appointment of sheriff at each settlement to the barrister chief judge. It is an important office that ought not, perhaps, to be so directly made matter of personal patronage.

Third. The jurisdiction of the court of each one of the judges and subordinate judges is to include in civil matters all the powers of the Court of Queen's Bench and of ecclesiastical and equity courts in England; that is, every court is to have power of cognizance over suits of all kinds. I do not object to this; but in Section XIX. there is a reference to a governor and councillors, as if those designations were to be retained, which, under the new constitution, will be quite unnecessary.

Fourth. Sections XX. to XXII. regard the appointment of assessors in civil cases. The power is given to the Governor of Bengal to prescribe or authorise the appointment of assessors for all suits, or for any class of suits, and the assessors are to sit and assist the judge in the trial, recording an opinion.

But their opinions and votes are to have no weight if opposed to that of the judge, though all should be unanimous on an issue of fact, of which they are as good, and perhaps better judges than he, and he singly rules otherwise. I much dislike this provision;

First, Because I think the Governor of Bengal not the proper authority to decide on the introduction of such a scheme.

Secondly, because assessors being *in loco* of a jury, ought never to be called or expected to sit except upon issues of fact, and then should be conceded as matter of right to parties applying.

Thirdly, Because if they sit upon an issue of fact, their view or vote ought at least

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least to be of equal weight to that of the judge. As assessors will be few, and retrials for error troublesome, if not impossible, I would let the decision upon an issue of fact in civil suits when there may be assessors, go by the majority of votes, the casting vote being with the chief judge. The alteration required in the draft of Act to give effect to this modification is entered in pencil on the margin of the draft.

Clause III.

Fifth. Section XXIII. provides for the admission and first proceedings upon civil actions. The new circumstance of the form of proceeding thus prescribed is, that the plaintiff is to be required to attend in person to be orally examined as the condition of his suit being filed and proceeded in. The onus is on him to make out a case for exemption before he can be heard by agent, unless he lodge a sum of money, the principle of which reservation I cannot at all see.

I object strongly to this change in the usual course of allowing suit to be filed by plaintiffs in person or by vakeel. It is quite sufficient to allow the judge to call for the plaintiff in person if he desires or thinks it necessary; the antecedent motion for leave to employ an agent, or the lodging of a sum of money, are clogs upon resort to courts for the aid they are bound to give, and which, in nine cases out of ten, is sought merely to compel payment from an unwilling debtor, not for settlement of an intricate dispute of law or equity; that I cannot think wise, or likely to be palatable to those concerned.

The same principle is applied in Section XXVI. to defendants from whom personal appearance is required, unless a case for exemption is made out; and in Section XXX. to XXXIV. are the rules for exemption, and for proceeding in cases where the order for appearance is contravened or disobeyed. The incongruities apparent in these rules prove the impracticability of the principle. If a plaintiff being able to attend does not attend, and the case for exemption is not made out, then of course, if the principle were good for anything, the suit ought to be dismissed and not proceeded with; but the draft of Act does not venture to prescribe this; on the contrary, it permits and requires the case to be gone into with the agent: so in case a defendant being able does not attend when summoned, and no case of exemption is made out, the case should be decided *ex parte*, as if defendant were in default; but it is not so: the judge may "make decree against the defendant after examining the agent upon the merits of the suit;" that is, he is to hear of course from the agent and allow him to plead; and doing so, is not surely to decree against him for default if he makes out his case for a dismissal.

These incongruities are conclusive to my mind against allowing the change proposed, which would prevent ordinary bond enforcement cases from being carried through courts by agents as well as principals. There is another part of this process which strikes one as open to objection, and that is, that the making out of both plaintiff's and defendant's pleadings is thrown upon the judge or the court officers. This may be well when cases are few and litigations simple; but if suits are reckoned by thousands, as in the court of requests of Calcutta, and in some of our Zillas, the trouble of this will require a great multiplication of judges or court officers, and consequent increase of charge.

Sec. 24 & 25.

Sixth. The rules for distributing causes after their admission to the file seem to me unobjectionable; and I have nothing to urge against the rules for pleading contained in Sections XXXV. and XXXVI., or those in regard to oaths in Section XXXVII., and the admissibility of evidence in Section XXXVIII., nor against the principles prescribed for decision of the cases and for the adjudication of costs.

Seventh. But in Section XLII. the judge is left at his discretion on decreeing a cause to adjudge against the losing party a fee, to be realised in part relief of the cost of the judicial establishment. I have heretofore pointed out that this method of reimbursing government will never answer; for whose business will it be to pursue the debtor and exact the amount so adjudged? The order will, so far as the treasury benefits, be mere waste paper, or at any rate will be realised so irregularly as to make the law tax unfair as it will be unpopular.

The principle, as it seems to me, on which government is entitled to demand fees is, that courts and judicial officers are only resorted to for the compulsory enforcement of debts when the creditor cannot realise by his own means; for the aid he asks he expects, and is of course willing to pay, looking to recovery from the unwilling debtor if his means shall suffice. The government is in this respect like an arbitrator or referee, who always is paid before he lets the award out of his hands, leaving the after recovery to be adjusted as part of the subject of arbitration. If any fee at all is taken to reimburse the charges of judicial establishment,

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it should be taken as the condition of affording the aid of court by the issue of the first process. The government never was, nor can be a successful enforcer of decrees; and I am opposed to the principle of this section on that account. The result would probably be to fill the civil gaols with government debtors, entailing further charges on government and yielding nothing.

Sections XLIII. to XLVIII. refer to execution of decrees and to deposits, which latter are required by Section XLIX. to be placed in the government treasury; the officer in charge of which treasury is to be accountant-general of the court. I have nothing at present to observe on these rules.

Section L., copied from the present charter, gives to the courts the power of sequestrating government houses and property, to enforce appearance and payment when suits are brought against the government or public officers of the settlements. This is a remnant of the hostile spirit towards the Company in which royal courts were originally established in India. It is time all this should be changed, and no further powers for compelling appearances, nor other forms of pleading should be used towards the Company's government than are established for colonial governments, in respect to royal courts established in colonies.

Eighth. Sections LI. LII. LIII. and LIV. provide for the ecclesiastical jurisdiction of courts, and the grant of probates, &c. It might have been as well to have referred to the Act passed last year for giving power in respect to the administration of the estates of deceased persons to our mofussil courts, and the authority of the Calcutta Supreme Court in respect to Europeans being given to the chief judge, the other judges might have been allowed to grant certificates and appoint curators, on the footing established for the zilla courts.

These rules, however, as far as Section LXII., are stated to be derived from the present charter; and if they have been found sufficient, and are susceptible of application to the mixed community of the settlements, and are known and in use, it may not be worth while to change them.

Ninth. Sections LXIII. and LXIV. provide for appeals. These lie from a second subordinate judge to a first subordinate judge, from this first to the chief judge, and from the chief judge to the College of Justice proposed to be established at Calcutta. On law points, the appeal from the lowest is to lie at once to the chief judge. I see no objection to these appeal rules, but, on the contrary, think them clear and simple, and deserving of adoption; but the College of Justice has not yet been established, so that the Act could not be passed as it stands without alteration, or a coincident legislation for the purpose of creating that court.

Tenth. Section LXV. contains the rules for criminal trials.

The grand jury inquest is proposed to be entirely dispensed with, and it is too cumbrous an instrument for the Straits settlements. A petty jury is made requisite in capital cases. Crimes punishable with 14 years' imprisonment, or transportation for life, are to be tried by the chief judge, with three assessors, and no jury. Inferior crimes beyond the magistrate's jurisdiction may be tried by the first resident or subordinate judges, with three assessors. The assessors are to record their opinion, but the judge is not to be bound by it, but may sentence upon his own conviction, against the unanimous declaration of the assessors. I agree with the Advocate-general in thinking, that if there are to be assessors in criminal trials, they should act as a jury, and decide the question of guilt or innocence, otherwise you give them the trouble of hearing and trying the cause for nothing. The rest of the rules of this long section seem to me unobjectionable, except that in consequence of the authority given to decide against the recorded opinion of assessors, it is deemed necessary to give a right of appeal, when there is a difference between the judge and them. If the assessors be made a jury, this appeal will of course be taken away, and the power of ordering a new trial substituted, in case the superior judge is satisfied that there has been a failure of justice in any conviction and sentence. The general power of revision for correction of errors, proposed to be given to the chief judge, is necessary; but it must not extend to the setting aside of jury verdicts, without a fresh verdict.

Section LXVII. contains rules for referring points to the College of Justice, which must be held over, of course, till that court is established. The remainder of the draft regulates the criminal jurisdiction and forms of procedure, the power of pardon, and other points, in respect to which I have nothing to remark, except that I do not find who is vested with the power of receiving approvers' evidence. The power of pardon is given to the Governor of Bengal by Section LXXVIII.; but

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but that is after sentence; the admission of accomplices' evidence has to be decided antecedently, and it is a nice matter of discretion, that, if not given to the chief judge, should be vested in the local government, or other chief authority, under whatsoever name he may be appointed.

I have thus completed the revision of the draft of Act laid before us by the Law Commission for providing local courts and forms of procedure in substitution for those established by the Royal patent, under which the present court exists.

I confess I think it highly desirable, that when the Royal court is abolished, and the patent surrendered, we should not have to look and refer to it to settle points of jurisdiction and of form, and that the Act to be passed by us for providing substitute courts should contain at least as much as the patent, if it be not possible to remedy it, the *corpus juris* by which our new courts are to be guided in all matters of procedure. I should not have been satisfied with the short draft laid before us by Mr. Amos, which went only to create courts, and left them to carry on business as it has heretofore been carried on by the Royal courts. I therefore was well pleased when the Governor general, in revocation of the assent he had given to the shorter draft, proposed to call on the Law Commission for this more formal and full one.

Undoubtedly the substitution of a full draft has led to some delay, but we shall be no losers thereby if the discussion upon the present draft shall enable the authorities in England, by whose instructions we must of necessity be guided in a matter which concerns the abolition of a Royal court, to declare in detail the principles on which they desire the administration of justice in the Straits settlements to be conducted in future.

The question is of wider importance than in its mere bearing on the communities of these Eastern settlements; for the law established for the mixed races which inhabit or frequent those ports will be a model for many other localities which possess features in common, and for which the courts and forms which have grown out of our Dewanee and Nizamut acquisitions on the continent of India are not quite suitable.

(signed) *H. T. Prinsep.*

Legjs. Cons. 30 Dec. 1842. No. 8.
Straits Settlement. Second Minute.

MINUTE by the Honourable *A. Amos*, dated the 26 September 1842.

IN my first Minute I confined myself to observing on the Report of the Advocate-general. I collect that the opinion of Council is against the system of assessors.

It remains to dispose of this complicated subject in the most expeditious way, consistently with the importance of the questions involved.

I do not concur with Mr. Prinsep in thinking that a reference to England is at all necessary; we have already all the sanction that can be required.

I think that all the important features of the altered system might be adopted immediately, and might have been adopted long ago had we not been waiting for the details of procedure.

One need but advert to Mr. Prinsep's Minute to see the lengthened discussions to which those details are likely to give rise, if they are to be settled in Council. If referred to England, the time which must elapse before they can be settled there will be very long, and I think the home authorities would very properly decline the task. I doubt whether the rules of procedure can be settled in a satisfactory manner in Council; and I should be disposed to refer them to the judges of the Supreme Court, whom we are about to request to frame a set of rules of procedure for a new civil court in Calcutta, and who have professed the greatest willingness to frame such rules.

The subject on which we have been so often pressed to legislate by the home authorities is that of a new and more economical constitution of courts; and I regret very much that this most desirable object has been so long delayed for subordinate and technical objects, especially as opinions are strongly opposed on some matters of procedure, and a considerable time must elapse before we can come to a conclusion upon them.

I think, on the whole, it would still be best to publish the draft Act which was before Council in April last, and of which Lord Ellenborough approved, as appears on the back. Mr. Prinsep I think is under a mistake about Lord Ellenborough having withdrawn his assent. The draft of April was postponed on my suggestion that some members of the Commission wished to take the opportunity of bringing forward

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forward that kind of procedure, especially with regard to assessors, which they thought most suitable to all courts of India; and I stated my impression that I did not see why this could not be done in a couple of weeks, as in fact it was only transferring to the Act what they had previously recommended in two former reports for the civil and criminal judicature of Calcutta.

I am aware that my draft Act of April may very probably be improved in form by a careful comparison with the draft of the Commissioners, although we stop short of adopting the various rules of procedure contained in the draft of the Commissioners; but this can very well be done after publication, and might only be lost labour and occasion loss of time if done now, and before we hear what they have to say in the Straits to the system. I believe the draft Act of April contains all the leading features of the system, upon which the Commissioners are agreed that there will be a great saving of money, combined with greater efficiency of justice.

(signed) *A. Amos.*

Minute by the Honourable *H. T. Prinsep*, dated the 30th September 1842.

Legis. Cons. 30 Dec. 1842. No. 9. Straits Settlements Courts.

I confess myself to be not a little surprised at the resolution proposed and acceded to by the majority of the Legislative Council present this day in regard to the judicial establishments of the Straits settlements.

In the early part of this year we had before us the Report of the Law Commission, to whom the subject had been referred, and the propositions and suggestions of that body, so far as concerned the kind of judicatories to be substituted for those now in existence met our general concurrence. When that Report was before us I stated that there were some propositions in respect to forms of procedure and the functions of assessors, &c. that I did not accede to, and that as the Report when forwarded to the Court of Directors, must be so with our opinions, I should be compelled to record a Minute if it was then to be sent home. A change occurred in the head of the government while this Report was under consideration, and it was Lord Ellenborough's wish to expedite as much as possible the proceedings necessary to effect the desired reform. It was, I think, by his particular desire that Mr. Amos undertook to prepare a draft of Act to be considered and sent home along with the Report.

Mr. Amos produced his Minute and draft on the 18th March, but stated at the time of bringing it forward that he had thought it right to lay it before his colleagues of the Law Commission, and found their sentiments to be opposed to the brief legislation in the spirit of which the draft was framed, adding that they would prefer to be called upon to frame a draft to carry out at large their own propositions.

This draft of Mr. Amos having been sent to Lord Ellenborough, was marked by his initials as approved before it was circulated to the other members of the Council, or read at any meeting.

It is to be remarked that Lord Ellenborough was then on the eve of departure to the North West Provinces, and was therefore much occupied with business of all kinds, and of very engrossing importance.

After returning this draft so marked, Lord Ellenborough was waited upon by Mr. Cameron of the Law Commission, and at a subsequent meeting of the Council (the last I think that was held before his Lordship's departure, but whether Mr. Amos was present at it or no I cannot decidedly say) his Lordship told us of this audience, and that in it Mr. Cameron had made two requests, one that the Law Commissioners should be called upon to prepare the draft of Act for Straits judicatories, the other that the Report sent in, together with a preceding one on the subject of a subordinate court for Calcutta, should be printed. To both these requests his Lordship stated that he was disposed to give his assent, and if we agreed he would leave it to us to carry them into execution. Our acquiescence being given, the printing of the Reports was ordered, and the letter was written, calling on the Law Commissioners for a draft of Act after the Governor-general had left the presidency, viz., 22d April last.

6 April.

We have now the draft of Act prepared by the Law Commissioners. Undoubtedly it has occupied longer in the preparation than either the Governor-general or any of ourselves could have anticipated, but this we may presume is evidence of the care with which it is framed. The draft carries out the propositions

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tions of the Report, which I have all along objected to; for that, of course, I was fully prepared. Upon its circulation, therefore, I felt compelled to record a Minute stating my opinion on these objectionable provisions, and suggesting that the draft should be altered for the correction of what I deemed to be defects. My objections, it is to be observed, are objections of principle, which hold as well against the Report as the draft. Mr. Amos concurs in several of these, but his signature is to the printed Report, and therefore I was not prepared for his disapproving so much as he has done; and certainly I did not expect to find him strenuously opposing any attempt to frame a law that should contain limitations of jurisdiction and forms of procedure of the kind recommended in the printed Report. At our meeting to-day, after considering this draft in circulation, it has been proposed, and is carried by the votes of the president and of Mr. Amos, (Sir William Casement being absent from indisposition) not that the Report and draft shall be forwarded to the Governor-general, at whose suggestion the latter was called for; not that the Report and drafts should be submitted with our opinions to the Court of Directors, which is all we are called upon, or at present competent to do, but that, in entire rejection of the draft of the Law Commission, we shall now publish, as adopted by the government of India, the short draft proposed in March last by Mr. Amos, which draft, as above stated, was held over by the Governor-general and Council at that time, in order that the government might also have before it the draft of the Law Commission fully carrying out their views, before finally determining upon the course to be recommended to the authorities in England.

30 Sept. 1842.

I protest against this hasty adoption of the March draft; because, first, I think we ought to publish no draft until it has been submitted for the previous sanction of the authorities in England. We are dealing, recollect, with a Royal court, the patent of which has to be surrendered or revoked, and with a Royal judge, who sits and acts by appointment of the Crown. The 46th section of the Charter Act specifically declares and provides, "that it shall not be lawful for the Governor-general in Council, without the previous sanction of the Court of Directors, to make any law or regulation whereby power shall be given to any court of justice other than the courts of justice established by his Majesty's charters, to sentence to the punishment of death any of his Majesty's natural-born subjects born in Europe, or the children of such subjects, or which shall abolish any of the courts of justice established by his Majesty's charters." Now the draft of Act prepared by Mr. Amos, short as it is, equally with the draft of the Law Commission, gives power of life and death over natural-born British subjects to courts other than those established by his Majesty's charter, and abolishes a court which sits under such a charter. It may be said that the despatch of the Court of Directors, directing a revision of the judicial establishments of the Straits, contains the previous sanction required by this section of the Charter Act, and Mr. Amos has stated this opinion in his place in Council, but that is not my reading of the section. I maintain that we must have the previous sanction of the court to the particular law or regulation that we propose to pass, and this obviously is the convenient and deferential course when we are dealing with Crown courts and Crown officers. Suppose we were to hurry this Act through without a further reference to England, what would be the recorder's position? He would be *functus officio*, a Crown judge holding Her Majesty's commission and obliged to remain on the island until ordered away, drawing of course his salary, and unable to take office from the government of India under the new constitution we propose to give to the courts, because still commissioned by the Crown; and all this because we have chosen to act with so much haste as to prevent the home authorities from issuing the requisite instructions and making arrangements to carry out our proposed changes. The obligation to refer our law for previous sanction, whenever we meddled with Crown courts, had obviously this, amongst other motives, for its being so provided by law, viz. that the home authorities, seeing precisely what was intended, and the time when it would come into operation, might take all proper steps if they sanctioned the law to prevent confusion or clashing of authority in carrying out its provisions. I maintain against Mr. Amos, but with all respect for his professional opinion, that we cannot pass this, or any other law for abolishing the Straits courts, and establishing others, until our law has been specifically approved and sanctioned by the Court of Directors; and if we cannot pass such a law, I think it must be obvious that we ought not to publish it, so as to pledge ourselves before the world to a course which may not be approved.

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approved. The Court of Directors have themselves prohibited such anticipatory publications and remarked strongly on the false position in which they are placed by such a course, that is, by publishing in India without previous approval a law, the passing of which is conditional upon their sanction. The despatch I refer to is that of 1836, regarding the Act for permitting British subjects generally to hold lands, which was published in draft while the government was under prohibition to pass it without their previous sanction and approval.

But this, though perhaps the strongest, is only one of many grounds upon which my protest against the resolution to publish Mr. Amos's draft of Act is founded.

A second ground is, because the resolution of April to call for a draft from the Law Commission was participated in, and indeed proposed, by the Governor-general; now that we have got this draft, how can we with propriety throw it aside and adopt the other before it has been seen and considered by Lord Ellenborough? When Lord Auckland was in the North West Provinces he made it a particular request that no draft of Act should be published as a draft until he had first seen and expressed an opinion in favour of the publication; Lord Ellenborough has not specifically renewed this request, but he naturally will expect, that if not on all occasions, at least when there is a difference of opinion at our meetings, he too should be consulted, before any such decided measure is adopted as the pledging of the government before the world to a specific course of legislation, by the publication of a draft of Act as read and approved. If this is requisite with ordinary Acts, none of which can be passed without the Governor-general's written sanction, much more so is it requisite with such an Act as this, which is one that cannot be passed without the sanction of the home authorities, besides that of the Governor-general.

I pass over the slight it would be putting on the Law Commission to throw over without consideration a draft on which they have bestowed so much time and care, and shall proceed to the merits of the draft proposed to be adopted and published instead of theirs. I object to this draft as defective in primary essentials, and on that account not proper to be published as our deliberate act.

First, The court at Singapore is to be composed of a barrister of five years' standing, the resident councillor, and his assistant, and if there be no resident councillor, the governor is to be a member, and all these are to try causes of all kinds, separately or jointly, and to distribute the business amongst themselves. Now it is not stated if these heterogeneous judges of the same court are to have equal power in all matters, or if not, whose authority or vote is to over-ride the others? Who is to keep the seal, issue the processes and warrants, appoint sheriffs and officers?* If it be said all these things are to be managed as at present, the answer is, that is impossible; for the governor is the first judge in all cases of the present court, and keeps the seal of the court. He is only made a conditional judge of the new court, and his position is not at all defined.

Secondly. Jurisdiction in all matters is given to every judge and to every court, subordinate as well as principal. Are they all to have ecclesiastical and admiralty jurisdiction like the present recorder's court? This is not at all provided for.

Thirdly. The barrister and governor are or may be members of the same court of general jurisdiction. An appeal, however, is to lie from decisions by the governor to the barrister, and from him to the Supreme Court of Calcutta. This is a very anomalous position in which to place a governor towards a fellow-judge. The appeal should surely be from his decisions alone to a full bench; and some provisions in respect to procedure are surely requisite to give a new jurisdiction to the Supreme Court of Calcutta, in respect to the final appeal, both civil and criminal.

Fourthly. With respect to criminal offences and their trial, the provisions are singularly meagre. Are magistrates to act as justices of the peace, and with only the powers given to such officers by British law? Who is to issue the commission of the peace and appoint these justices? On all this the draft is silent, though it is provided for in the present charter. Is the jury of five to be unanimous in the verdict? I suppose so, but it is not stated. I see it is proposed to have such a jury wherever the punishment exceeds six months' imprisonment, and only

* The appointment of officers is, I see by another section, left to the Governor-general in Council, but that I understand to mean only the ordering what officers are to be employed, and on what salaries. The patronage of the clerks and bum-bailiffs cannot be intended to be reserved to the government of India.

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only such a jury when it is a case of life and death against a British subject, but there is not a word anywhere about commitments for trial.

The rules for criminal procedure and for the jurisdiction of criminal judges seem to be particularly defective, and I should be sorry to see them published in such a shape or sent to the Court of Directors as those we have deliberately adopted.

For the above reasons I protest against publishing at present any draft of Act as read and adopted by the Council of India, and I especially protest against the publication of this draft of Mr. Amos. I propose instead that the two drafts, with our Minutes, be sent to the Governor-general for his opinion to be expressed upon the course to be presently adopted, and that we refer both drafts, with the printed Report of the Law Commission, to the Court of Directors, together with our several opinions as thus recorded, in order that their previous sanction may be given to the particular law by which new courts are to be established having power of life and death over British-born subjects, and the existing Royal charter court of the Straits to be abolished. This I maintain to be indispensable under the Act 3 & 4 Will. 4, c. 85, s. 46.

(signed) *H. T. Prinsep.*

MINUTE by the Honourable *A. Amos*, dated the 5th October 1842.

Legis. Cons. 30 Dec. 1842 No. 10. Straits Settlements. Mr. Prinsep's Minute.

WITHOUT imitating the example of Mr. Prinsep in expressing surprise at the opinions of other members of Council, thinking these, and other observations of a similar tendency in his Minute, if followed by similar observations according to the opinions and feelings of other members, might tend to the interruption of business, I shall proceed, with the greatest deference to his sentiments, to state shortly my view of the circumstances.

I apprehend that the powers already received from the home authorities are sufficient to enable us to make the modifications which we propose. But it is less material to argue this question, because a considerable period must elapse before the present draft, or any modification of it, can pass into a law. We well know that the home authorities are anxious for essential modifications in the recorder's court; and the proposed reform has, from a variety of causes, been postponed for a most inconvenient length of time.

It appears to me most desirable to publish immediately the general principles of the new constitution of courts, and which are expected to improve as well as greatly economize public expenditure in the settlements. Supposing, in Lord Ellenborough's opinion, a reference home be essential, it will be most desirable to send home as early as possible the communications which we may receive touching the general principles of the new system. This will enable the home authorities to take a statesmanlike view of the measure.

Besides what I call the statesmanlike view of the subject, there is another important view of it, of a lawyer-like and more technical character, and which regards the procedure of the courts after their broad outlines have been fixed. To this subordinate but important view of the subject most of Mr. Prinsep's remarks apply. It is plain that this part of the subject cannot be finally arranged for a considerable time, nor can we reasonably expect assistance or direction from home with regard to it. I think that probably it may be deemed expedient to refer the matter for the consideration of the judges. However, it is sufficient to say, that we are far from being in a condition to lay down a new procedure for the Straits courts.

But we are in a condition to lay down the broad outlines of a new constitution of courts. Upon this subject there is scarcely any difference of opinion. It was to this, and this only, that the April draft was intended to apply. It was founded mainly on the Report of the Law Commissioners; and I believe it incorporates, substantially, the general principles of their measure of reform. I should have preferred taking those general principles from the draft sent by the Commissioners in their own form and language, leaving out what they provide about details of procedure. I endeavoured to do so, but found much difficulty in the task: it is, I think, unnecessary. If Mr. Prinsep will propose any modifications of my draft, making it more like, or identical with, that of the Commissioners upon the points to which it adverts, I would very much rather adopt those modifications than retain anything of my own. My object is solely to steer clear of technicalities and disputed points,

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points, which are fortunately almost confined to a part of the subject which is the least pressing in point of time. With regard to the recorder, the government would most probably allow (under the clause for the purpose) the present occupant the salary he now receives, though the nature of his functions is changed; especially as his duties will not be diminished.

It appears to me, on the whole, extremely desirable to give to this long dormant matter the impulse arising from the publication of a draft containing the general principles on which we have substantially agreed. The draft is no hasty measure; it is all substantially contained in the long considered and elaborate Report of the Commissioners, and, in substance, has been discussed several times in Council. A practical shape to the opinions of Council and the Commissioners is all it aims at.

(signed) *A. Amos.*

MINUTE by the Honourable the President in Council, dated the 18th October 1842.

Legis Cons. 30 Dec. 1842. No. 11.

Straits Settlements.

I CONCURRED with Mr. Amos in thinking that the draft Act prepared by himself, and approved of by the Governor-general in the beginning of April last, should be published for the first time, and the proceedings which have since taken place submitted for his Lordship's consideration.

2. My reasons for so concurring are as follows:—Under circumstances of which there is no trace on the record, and regarding which members of Council differ, the draft was on the 22d of April, that is to say, about ten days after his Lordship's departure, referred to the Law Commissioners, for the purpose, apparently, of adding the details of procedure, which it was then supposed would not take much time. Had I known what now appears to have been the object for which that reference was solicited, viz. to enable a certain member of the Commission to introduce into the draft his own peculiar views, especially as regards assessors, I should never have concurred in it; for to those views I have been always opposed, and I consider the introduction of them into the judicial procedure of any part of India as most objectionable.

3. The Commission, however, having at length sent us up an entirely new draft, the provisions of which none of us approve, I considered it most desirable, in order to avoid still further delay, which is so imperatively to be deprecated, in consequence of the orders from home, the cumbrous inaptitude, as Mr. Prinsep observes, of the present institution and forms of administration to the state of things in the Straits, and the enormous expense with which it is needlessly attended, that the draft should be immediately published, if only to afford the inhabitants of the Straits, who are the most deeply interested in the change, as well as all other parties concerned, the opportunity of stating what they may have to say upon the subject. In the meanwhile we might consult the Supreme Court as to the rules of procedure, and we should have abundant time to hear from the Governor-general before anything conclusive could be agreed upon.

4. We are now called upon to come to a stand-still until a reference shall have been made to the Governor-general at Simla, and even to the authorities in England, neither of which causes, for the mere publication, for the first time, of a draft of law, which the authorities in question have urgently pressed upon us to take into consideration, and which the Governor-general has already approved, appear to me to be requisite. The Governor-general, engaged as he at present is with the most important military and political affairs, will of course expect that all such details should be managed by ourselves, and we know that his Lordship is most desirous that the measure should be carried into effect with as little delay as possible.

(signed) *W. W. Bird.*

NOTE by the Honourable *A. Amos*, dated 18th October 1842.

I HAVE only to add, or rather repeat, that what has been called my draft, was intended only to express in substance what was recommended by the Commissioners in regard to the change in the constitution of the courts, leaving the details of procedure, most of which are not more applicable to the Straits

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courts than the courts of India, to be disposed of separately from these fundamental changes, upon which the economy of the reform depends. I wish further to observe that I consider myself perfectly free to disapprove, in Council, of matters contained in reports, which I may have signed as Commissioner. And where my objections relate to subordinate matters of detail, and the report is pressed for, and much delay has occurred, the writing of a Minute in the Commission would often be attended with inconvenience, and not be of any practical benefit. In the present case I agree, substantially, with the report in its leading principles, and in much of the detail, but am not prepared to agree to the entire details, and therefore would only publish the changes in the constitution of the courts, in the shortest practical form.

(signed) *A. Amos.*

(No. 123 of 1842.)

Legis. Cons. 30 Dec. 1842. No. 12.

From the Governor of Prince of Wales' Island, Singapore, and Malacca, to *J. F. Halliday*, Esq. Secretary to Government of India, Fort William.

Sir,

Legis. Dep.

I HAVE the honour to acknowledge the receipt of your letter of the 17th June, giving cover to a copy of one from the Law Commissioners, under date the 8th February last, to the address of the Right honourable the Governor-general, and desiring my opinion, as well as that of any of the local officers competent to form one, on the subject therein discussed. In obedience to these orders, I sent a copy of the letter to Messrs. Garling, Church, and Salmond respectively, as also to Sir William Norris, the recorder; and I now enclose their several replies, with the exception of Mr. Salmond's, which I have not yet received.

2. Before I proceed to offer any opinion on the subject generally, it may be as well for me to say that, after an experience of ten years on the bench in the court of judicature of the Straits, I have completely altered the opinion I once entertained, that a professional lawyer is unnecessary; for I am now satisfied, that independently of the security his presence affords to the public, that if the lay judges misadminister the law, the case can be renewed and the defect rectified; it further imparts to the lay judges a degree of confidence, which they would not possess if they felt their decisions on points of law were not open to local and professional review.

3. The Honourable the Vice-president in Council will observe, from the learned recorder's letter, that I have had considerable conversation with him on this matter, and as Sir William Norris's letter was not written until the question had been often and fully discussed between us, I may at once remark that I generally concur in the opinions he has expressed, with two or three exceptions, which I proceed to notice.

4. The learned recorder is of opinion that the court, if possible, should be altogether independent of the executive authorities, in which case there must be two recorders, or that the court should only consist of a recorder and the chief civil local authority at each station, dispensing with the governor altogether; but as neither from the papers before me, nor from any other quarter, have I any reason to believe or to know to the contrary, I shall consider that the appointment of Governor is still to remain untouched, notwithstanding the Law Commissioners propose that that officer should not be employed in judicial business.

5. If then the appointment of governor is to remain on its present footing, I am of opinion that by far the easiest and simplest plan of ensuring the object in view, viz. "efficiency and economy," will be to continue the court of judicature on its present footing, and for the government of India to obtain the sanction of the Crown to make such alterations in the letters patent as are necessary to enable the amendments proposed by the Law Commissioners being carried into effect, with power to reduce the salary of the recorder to the same scale as that of the resident councillor, and to abolish the appointment of registrar and sheriff, as at present constituted, altogether.

6. This plan would in substance be that proposed by the present recorder, with the exception of the court being composed of three instead of two judges; and it has the sanction to a certain extent of two former recorders, viz. Sir Ralph Rice

and

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and the late Sir Benjamin Malkin; the former says, in his evidence given in March 1830 before the House of Lords, when speaking of his lay colleagues, in reply to question 1413, "Sometimes one of them would attend during the session, and was of great assistance to the recorder, particularly in regard to some of the customs that had prevailed." And again, in reply to question 1394, wherein he is asked if any amelioration could be effected in the constitution of the court in the system of the law, he says, "I think it would be very difficult; there must necessarily be in that jurisdiction a considerable degree left to the discretion of the person who is to administer the law." Sir Ralph Rice was recorder of Penang for seven years. Sir B. Malkin, in a letter dated 27 May 1833, to the address of the then governor, Mr. Ibbetson, on the subject, expresses himself as follows:— "Whether the existence of a King's Court at all in the Straits is desirable; whether its expense does not outweigh its advantages, is, I am aware, a question on which opinions differ. My own opinion may not be an unbiassed judgment; but I have little doubt, I confess, of the expediency of continuing, with certain modifications, if a new charter can be obtained for the purpose, the present system."

7. Should this sanction be obtained from the Crown, and presuming the salaries of the resident councillors to remain on their present footing, viz. 2,000 rupees per month, a saving to the extent of 38,853 rupees might be effected, which, after all, would be the only real saving as regards the court; for if the salaries of the few civil servants are to be curtailed, there is certainly no reason whatever for attributing the reduction of the expenses to the reform in the judicial administration. *See* Statement.

8. While on this subject, I may as well say that any change that may be made is not likely to affect myself materially; but I still consider it a duty I owe to the servants of the executive government, to the future recorder, and to the State generally, to record my opinion, founded on an experience of 23 years, that with a less salary than 2,000 rupees per month, residents at Singapore and Penang, and the recorder, will be unable to live in the same style as the merchants and others of the settlement, and be entirely unable to display that certain show of hospitality to which all public officers are exposed, and in no place more so than at Singapore; and that a reduction will further work an injury to the settlement, as, under such circumstances, none but the most indifferent of the public servants from the presidencies will take the appointments; and they, from the smallness of the allowances and the expensive nature of the place, will always be looking forward to a return to their own presidencies. Whether or not servants of this description will be able to manage a settlement composed of the materials that Singapore is, and supply the judicial wants of a port at which more ships annually touch than arrive at Calcutta, time will show.

9. I have already observed that our present recorder considers an entire separation of the judicial and executive branches of the service desirable; and I of course am not unaware that, on general principles, his position is undeniable, and that its adoption at the presidencies has perhaps proved useful; but I confess I doubt if its extension to the Straits would be so. It must be remembered in Calcutta, for instance, there are three judges; and when a new one arrives he has the experience of his two other brethren to refer to, and with whom he may consult on matters that may be new to him; he has also an honourable and enlightened bar to refer to. In these settlements a judge under any circumstances must be entirely differently situated; for even if he had a professional colleague at Penang with him, he could only correspond by writing, so that they could be of but little assistance to each other, and of none in those cases touching the habits and usages of the people, respecting which the learned gentleman would most require it.

10. I again repeat, therefore, that I think the present plan of the constitution of the court, the most eligible that can be adopted, and in which opinion I think I may say Sir Ralph Rice and Sir Benjamin Malkin concurred; it affords a tolerable security for the decisions not being altogether at variance with the principles of law, as any one objecting to the decision of a lay judge on points of law, can have it reviewed by the professional judge, on showing sufficient cause; while the occasional presence of a gentleman who has spent perhaps 20 years among the people, and is conversant with their language, habits, and modes of thinking, certainly adds very considerably to the chances of the court coming to a right and correct decision on facts.

11. I would here remark, moreover, that the governor may be considered to be nearly unbiassed in all revenue matters, as he does not interfere in its collection in any way; it is only in political cases in which he could by any means have an undue inclination;

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inclination; these cases are very few, and with the governor at one station and the recorder at another, the present system I think presents fewer objections on the score of entrusting to the same individuals executive and judicial powers than any other that I am aware of.

12. The government will be pleased to remember that all convictions against the revenue regulations of these settlements take place before two magistrates; if the present system is abolished, it will be necessary to constitute some other tribunal to settle questions of this nature, and I should be sorry to see them adjudicated by any single government servant at all interested in the collection of the revenue; at present they are disposed of by the assistant resident, and generally an honorary magistrate who is a merchant of the settlement.

13. I have perused with great attention the Report of the learned Law Commission, and on the whole I consider the power it intends to entrust to the several judges sufficiently comprehensive to ensure despatch and efficiency; but I think their proposed system more cumbersome, and by no means so efficient as that at present in force would prove with the proposed amendments. The one and principal objection I have to the scheme is the power that it intends to confer on the professional judge over his lay brother—a power which, if not very discreetly used, will tend to create jealousies between them, which cannot but prove extremely detrimental to the public service, and be by no means likely to afford the facilities for "consultation and reference" contemplated in paragraph 52 of the Report. In the opinion expressed by Sir William Norris under this head I fully concur.

14. If the present charter is surrendered, I would recommend that there should be two courts at each settlement, one to be composed of the barrister and the resident as colleagues, the other by the assistant: in the former the barrister should preside, usually at the settlement at which he may be, on the civil side as also in all criminal courts where capital or other offences, involving a penalty of 14 years' imprisonment, are tried. In the absence of the barrister, or with his concurrence, at the station where he may be, the lay judge should, in civil causes, have exactly the same power as the barrister judge. The assistant resident should have a jurisdiction to the amount of 200 rupees on the civil side, and on the criminal, he should be allowed to dispose of minor misdemeanors of any description, and petty thefts, when the value of the article stolen does not exceed 10 rupees, and which would be sufficiently punished with six months' imprisonment, and 200 rupees fine.

15. In all cases in which the losing party may be dissatisfied with the construction of the law by the lay judge, he should be allowed to move for a new trial, on grounds distinctly shown and sworn to, as at present, before the professional member of the court. But I must maintain no such power should be vested in the professional judge to interfere with decision of the lay judge, in respect to facts of which I think, of the two, perhaps the lay member may be the best judge; for I feel tolerably satisfied, that from the nature of the cases usually coming before the Straits courts, there is more chance of injustice being done by the professional judge, from coming to false conclusions on facts, than there is from the misdirection and misapplication of the law by the non-professional judge.

16. I may generally here state that I think the system of assessors will be by no means popular in the Straits; and notwithstanding the opinion come to by the learned Commissioners, I cannot help thinking that the subordinate criminal court, if the system recommended by the Law Commissioners is carried into effect, or the court of quarter sessions, if the present system continues, should be held before a jury, say of six or 12, according to the nature and description of the trials, of which the presiding judge will be able to judge from the perusal of the depositions on which the prisoners have been committed; in the former case four, and in the latter nine voices to constitute the verdict. To this I can see no objection, as the professional judge could take his seat there when he saw fit, and the objection taken to that court by the late Sir Benjamin Malkin might be obviated by declaring that the professional and lay judges should be the only judges of this court; it might be further ordained that the lay judge presiding at such session should have power, at any time of the proceedings, to postpone the case until the arrival of the professional judge.

17. By this arrangement the proposed system of appeal will at once be got rid of, which I consider the most objectionable feature of the whole proposal. For instance, suppose a criminal tried before the lay judge is convicted by the voice of that judge and two assessors, one assessor, being dissentient, appeals to the professional

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professional judge's court, when again one assessor may be dissentient, the appeal must, I suppose, be sent on to Calcutta. Assuredly it would be infinitely preferable to try all cases not capital before either of the judges, professional or lay, as might suit their convenience, when both were at the same settlement, with a jury whose verdict should, as at present, be conclusive, and, if necessary, unanimous.

18. I must here remark that the bickerings, disagreements, and arguments that would of necessity constantly occur between the judges of either court, and the assessors, would neither add to the dignity of the bench nor lead the inhabitants to respect the tribunals.

19. I would allow law agents to practise in the superior court, wherein either the professional or lay judge presided, but not in that of the assistant resident, which may be termed the court of requests; and as a general rule, I would make the party employing an agent pay the expenses of that agent, unless there was something in the case which might induce the court to consider it proper the losing party should pay them, which might be the case when the cause was intricate, and required the aid of a person having some little pretension to professional skill, or when the proceedings of the losing party had clearly been groundless, and instituted for the purposes of vexation, &c. &c. At Penang, until lately, it was the custom for the losing party to be made to pay the agent's costs, however simple the case. At Singapore the lay judges have always acted on the principle here advocated. Enclosure No. 1 will show precisely how the different systems work as regards expense; it contains the costs of three different suits. The first was instituted to recover 150 dollars; the judgment was for 150 dollars, and the costs amounted to 138 dollars, including the agents on both sides, which alone amounted to dollars 100. 70. The second was to recover 75 dollars; the judgment of the court was for 30 in favour of plaintiff, with full costs: these amounted to dollars 72. 05, of which 48 dollars were on account of the agent employed by plaintiff, who, though he did not recover one half the amount he sued for, was considered entitled to the costs of his own agent. The third shows the agent's costs in a suit to recover 100 dollars, to amount to dollars 46. 45, and the original bill of costs attached thereto will show the items composing the agent's bill. Of course the admittance or refusal of agents to practise in court would remain, as at present, at the discretion of the judges. This power of exclusion is absolutely necessary to prevent persons of improper character appearing as agents.

No.

20. I think the abolition of the grand jury quite unobjectionable: those heretofore composing it can be made petty jurors with advantage, or assessors, if the plan of appointing them be persisted in.

21. The Law Commissioners appear to consider that the proceedings before the court should be carried on in the English language, in which I fully concur, for reasons expressed very fully in the letters of Messrs. Garling and Church.

22. The Law Commissioners have entirely omitted to notice how they propose the ecclesiastical duties of the court are to be performed, but I presume as at present.

23. I append a memorial of what may be considered our present exclusively judicial establishment, with another showing the nature of one that I consider will be efficient, either for the present court, or for any other that may be hereafter constituted. These are all the remarks that it strikes me at present are called for from me; but there are two others, more of a personal nature, which I venture to refer to.

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24. In letters written by me some years ago I stated that the process of the court at that time was dilatory and too technical. This was denied by the late Sir Benjamin Malkin, and is so still by our present recorder at Penang. All I have to say is, that at Singapore, where four-fifths of the cases instituted in the court are conducted by the registrar's department, the pleadings are simple, and drawn out agreeably to the provision of the charter; while at Penang, where the recorder presides and law agents are allowed more latitude, the forms of pleading in use at Westminster Hall are attempted; and the agents, having been instructed by their clients, draw out the declarations and pleas in assumpsit, detinue, trover, or in any other technical form that they may conceive will suit the particular case. Some years ago I remember a case wherein it was alleged, on a petition, that one party had accidentally lost some hundred bags of sugar, and another had casually found the same wholesale quantity. Whether or not this is a fictitious style of pleading, and consistent with the direction of the charter, which in substance says, "That a person requiring the aid of the court, is to prefer his complaint verbally

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verbally or in writing, whereon the substance of the complaint is to be reduced into writing; and if it be preferred in writing, it shall be divested of all extraneous matter, and be put into the form of a petition, stating shortly the substance of the matter complained of; the pleas and answers to be treated in the same simple manner,"—I leave the Law Commissioners to judge.

25. Mr. Young has, I observe, alluded to a judgment passed by a lay judge, and which he asserts to have been considered as erroneous; and the Law Commissioners cite that instance as one strongly pointing out the necessity for professional aid. That professional aid is necessary, I have already admitted; and happy should I be could I conceive that during 18 months, the period of Mr. Young's residence in the Straits, that this was the sole instance wherein the law had been misapplied by a lay judge; but as I was the judge who pronounced the judgment, which is very materially confirmed by a judgment passed in Bombay in September 1840, *In re* Robagores Cowajee *v.* Captain Lowe, of the Berenice, I venture still to doubt if it was not legal. But that the learned Law Commissioners may see the real state of that case, I venture to append a copy of the judgment passed on the occasion.

I have, &c.

Singapore, 28 September 1842. (signed) *S. G. Bonham,*
Governor of Prince of Wales' Island,
Singapore, and Malacca.

P. S. Having consulted the two chief ministerial officers of the court at Singapore and Prince of Wales' Island, and who may be termed the local registrars, and are both gentlemen of high respectability, of considerable talent, and of much experience, I also forward two separate papers with which they have separately favoured me. These papers will show the description of persons at present employed in the court as registrars; and they will, I am satisfied, leave if their salaries are reduced lower than the sum I have proposed, viz., 600 rupees per month. *S. G. B.*

(No. 302 of 1842.)

Legis. Cons. 30 Dec. 1842. No. 13.
Enclosure.

From the Resident Councillor, Prince of Wales' Island, to the Honourable the Governor of Singapore, Prince of Wales' Island, and Malacca.

Sir,

I HAVE the honour of acknowledging the receipt of your letter, No. 164, of the 20th ult., forwarding copy of a printed Report by the Law Commissioners, dated 8 February last, presenting their propositions touching the future judicial administration in these settlements. Upon this Report you have been pleased to invite my remarks.

2. The Report expresses the opinion of the Law Commissioners to the following purport: "It does not enter into our scheme to employ the governor in any judicial function."

3. Unless the supreme government be prepared to correspond direct with the civil authority at each of the settlements, an officer superintending the three settlements will be employed. As regards the question in hand, it matters little whether this appointment exist as at present, or on a revised principle. Any how, he will be the chief civil authority in the Straits; and as such I cannot, in the absence of any known expression of the intentions or wishes of the supreme government, suppose that he will be excluded from some participation in the judicial administration.

4. Should the office of governor be retained, and the governor become a member of the bench of justice, the system laid down by the Commissioners needs to be, in my humble opinion, modified. Such an officer would probably maintain but a repulsive intercourse with the recorder, who might at pleasure so conduct himself as to wound his feelings, or, in plain words, his pride. This is not a necessary consequence of the proposed system; yet it is very possible, and the experience of one period may render it not improbable.

5. But I shall leave this question, and suppose that government have resolved upon the system generally as proposed by the Law Commissioners. I shall refer to the different topics in the order they are presented to me.

6. The

6. The law of England, as made applicable to the various circumstances of the mingled classes of the Straits' communities, should be the *lex loci.*

7. Mr. Murchison would utterly exclude court agents where the lay judges preside, and would substitute the Malayan language for English.

8. Law agents, if diligent, may become useful by collecting and arranging information, and by occasionally eliciting latent and reluctant truths from the witnesses of the opposing party; but they do also, at times, mystify what is clear, cavil at trifles, and sacrifice simplicity to the display of a fictitious acuteness. By protracting the proceedings of the court, the ignorant are persuaded that its business is intricate and its practice expensive, oppressive, and odious. On the late circuit the recorder had but little to do at Malacca. The reason is obvious: there were no agents. The most crafty and litigious had removed; a second was otherwise employed; a third, recently only engaged, was dead. Should these agents, however, not be excluded, they ought not to be allowed in cases of and under 100 rupees.

9. It is proposed to continue the use of the English language in pleadings in the court of the professional judge, but to substitute the Malay language in the lay courts. As all parties are, under the existing establishment, at liberty to use what language they find most convenient when addressing the court, I conclude that the object is to have the preliminary papers, as petitions, pleas, answers, &c. drafted in Malay. Against this measure there are, I venture to submit, weighty objections.

10. The ordinary Malay idiom is so deficient in precision and perspicuity, that in cases involving several names or dates, or sums of money, or transactions, or intricacy, a translation of such papers must be made, and the party be examined with the view of ascertaining whether the translation be correct in point of fact. This would consume time and stationery; and I venture to believe it would not afford greater confidence and facilities throughout the inquiry, nor prove more satisfactory in the issue, than may be obtained under the present system. Depositions taken down in Malay are liable to similar objections, but depositions in civil cases would seldom be required. The judge's notes of evidence must necessarily be in English. The only part of the proceedings which remain to be noticed is the *viva voce* evidence of witnesses, from which the judge's notes are drafted. I have already observed to the purport that a witness may use any language with which he be most familiar. This, however, is under certain limitations. If a Kling or a Chinese enters the box, I would rather he should speak and be spoken to in the Malay language, even if his knowledge of it be somewhat defective. I feel assured that the judge can, by his knowledge of the Malay tongue, keep an effectual check over the proceedings. In cases where the Tamil and Chinese languages are used as a medium, the court labours under difficulty.

11. I am also inclined to think that a lay judge can secure the truth much more effectually and speedily by speaking English, and watching the interpretation, than by a direct address in Malay. The Malay of different places has the peculiar idiom of those places, and is more or less tinctured with words utterly unknown beyond their respective boundaries. For instance, the Malay of Quedah, of Manangcabow, of Passummah, or Sumatra, of the Celebes of Batavia, these differ in words, phrases, and enunciation. An ignorant witness is more likely to comprehend the familiar utterance of an interpreter who has learned the language by ear only, and from the bazas, than the more formal phraseology of one who has studied the language. In respect of my own experience, I may speak with certainty on this point.

12. On the whole, then, I would suggest, that touching the language to be used, matters be left precisely as they now are.

13. As regards the proposed option of a party to a suit having translations of the record, I see no objection against the measure; always, however, provided that such copies and translations be subject to fees as at present. Should the fees be removed, I apprehend frequent and unceasing applications would greatly and most needlessly increase the business in the registrar's office. It will be borne in mind that the minute-book contains little beyond the headings of and judgment in cases, and the names of the parties and their respective witnesses. A more formal and detailed record might be necessary, and a close copy thereof reasonable and salutary, were our proceedings conducted as in some courts they are, and in Malacca, as I understand, were, under the Dutch, conducted with closed doors. I am of opinion that 19 persons out of 20 would not be one iota the wiser for such translations.

 14. The

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14. The permanent presence of a professional judge is desirable; occasions of reference, and for appeal, may arise, on which the delay consequent upon the absence of a judge beyond seas would entail serious inconvenience. The reasons assigned in the Law Commissioners' Report are cogent; questions immediately before a subordinate court, the right construction of a recent Act of the Indian Legislature, or a Parliamentary statute, may render prompt and easy communication with a professional man most desirable. The opinions of the courts of Sudder Dewanny and Nizamut Adawlut are constantly applied for by the provincial judges in Bengal, as I gather from the published volumes of the "Constructions," by these courts, of the laws and regulations of Bengal.

15. To preserve the simplicity of civil proceedings, as contemplated by the Law Commissioners, it may be necessary, in addition to the exclusion of law agents, to declare a discretionary power to reside in the judge in respect of certain documentary preliminaries, dilatory pleas and technicalities, in which some of the agents are fond of dabbling, and the use of which they might still attempt to urge upon those who may seek their advice. Take, for instance, the 4 & 5 Ann, c. 16. This statute is intended for "the easier, speedier, and better advancement of justice." I have known this Act to be quoted by way of proving that not the mere usage or practice of a court, but an express command by statute, rendered the proffert of letters of administration indispensable, and that the non-proffert must be fatal to the party failing to proffert.

16. I approve of the provisions made for the adjudication of cases "obviously involving points of English or international law," and "cases of 10,000 rupees and upwards," being reserved for the professional judge.* The reasons for the former are manifest; those for the latter respect the preparation of the documents necessary to be forwarded on appeal. The case referred to by Sir Benjamin Malkin, para. 22 (p. 20) occasioned, if I remember correctly, some hard discussions at the time upon this very point.

17. I may not correctly comprehend the precise meaning of the terms "We think that the distribution of cases should ordinarily be performed by the professional judge."

18. In a community, an important portion of which is fluctuating, it is essential to provide for the receiving of the evidence of witnesses who may be about to leave the jurisdiction. The examination of witnesses on interrogatories *de bene esse* is, however, a matter of course.

19. Province Wellesley needs a court of its own, for the reason assigned. It is advancing in population and importance. The assistant's time is fully occupied.

20. Full liberty of appeal is proper. The judge should, however, be required to make himself satisfied that there is solid ground for the measure in every admitted appeal. Our early recorders were soon sensible of this. I know of a case, a few years back, in which matters had gone so far that a recorder had recommended my withdrawing a judgment; meanwhile he removed to one of the presidencies and my judgment was confirmed by his successor. The case had not originally been judicially considered by the first of these professional gentleman. Not having the means of consulting the draft regarding special appeals, submitted by the Law Commissioners on 4 December 1841, I shall not particularly refer to it. The provisions for the appellant's petition being presented to the court against whose decision the objection is raised, and the permission proposed to be given to the respondent for handing in his answer, are salutary measures.

21. I am of opinion that the professional judge should not have the power of calling up at his pleasure "any cases, original or appealed, which from representations made to him, he considers to be proper subjects for adjudication by himself, as involving questions of law." This appears to me as vesting him with a power which may (according to humour, for the professional no less than the lay judge, is but man,) be exercised after an invidious, vexatious and inquisitorial manner. The Law Commission wish to surround justice with every safeguard, and they desire to preserve the professional functionary free from executive influence, and as a check over a lay administration of justice. These objects may surely be obtained without raising occasions of unpleasant feelings between the professional and lay judges. I have seen one in the Straits who would not have been backward

* I would say a court presided by or enjoying the presence of a "a practised and learned" gentleman.—*J. G.*

ward of encouraging representations inviting the full display of the stretch of power thus brought within his reach.

22. In criminal procedure some provisions will be necessary for compelling the presence of assessors or for empowering the lay judge to proceed in their absence after due warning given to them.

23. It is not stated what shall be the details of the "periodical statements," and I have no means of ascertaining the particulars of "those submitted to the Sudder Dewanny Adawlut and Sudder Nizamut Adawlut of Bengal." But if not only the professional judge but the college of justice, is each, "to be furnished with periodical statements," these ought to be very brief.

24. I take this occasion of adverting to a topic upon which much is often spoken,—the actual work performed by the resident councillors. This work is not to be measured by off-hand declamation. As far as I am personally concerned, I am free to declare that what with recorded work, work unrecorded, and meeting those demands of courtesy which, from their indispensable obligation upon the functionary, claim a right to be considered, my time is occupied to the extent of my health and strength.

25. The petty sessions, as proposed, may prove a valuable portion of the system. It is worthy of consideration whether this court should not have some defined powers expressly enacted in respect of masters and servants, whether in-door domestics or field labourers, and for enabling the court to carry out an early suggestion of Sir John Claridge, to give the utmost latitude of construction to the words in the charter, see page 47, "quarrels and controversies." The purpose of surrendering this charter will be borne in mind.

26. The proposed change in the jury system is important, and I am of opinion desirable, for the reasons assigned in the Law Report of 31 August 1838.

27. "To render officers and soldiers amenable to the local courts for actions of debt and personal actions under 400 rupees," is an improvement most desirable. The court can, however, at present compel an officer to make appearance, and should he waive privilege either in so many words or by his silence, he could not after judgment pronounced deny the authority of the court. If, on the other hand, an officer should plead his privilege, and there should exist an insuperable barrier to the functions of a military court of requests, it has to be decided whether the plea of privilege could hold.

28. Before closing this letter, I am induced to submit for your reflection the intense desire of the Indian Law Commissioners, as manifested throughout their Report, of exalting the professional judge in array against the lay judges. Those are as much as possible laid under his single control, and exposed to the action of those littlenesses of human nature from which the noblest are not altogether free, and of the painful influence of which we have been witness in these Straits.

29. The rate of salary proposed for the professional judge does not hold out the assurance that we are to enjoy the presence of a barrister of the highest order; yet to his single uncontrolled will and mandate the lay judges are to be as subordinate as the proposed court of the Draft Act is to the Supreme Court, or the provincial judges are to the court of Nizamut Adawlut.

30. The lay judges are very differently circumstanced, and appointed from the "one judge to be appointed by the Governor of Bengal," Draft Act, section 1. This judge may be taken from a copious list, of which at the utmost he can be only one of several leading members. In the Straits the lay judges comprise the only and the entire executive authority. The native community is hereby encouraged to look to the professional judge as the principal authority in the Straits, and the executive as holding a very subordinate place. Is the professional judge less subject than the lay judges to the influence of human emotions?

31. It is worth while to carry the consideration of this subject a step further.

32. I would refer to the 42d and 54th sections of the Report of the Indian Law Commissioners, dated the 31st August 1838.

Section 42. "We think that whenever a (professional) judge and jury (composed of 12 persons) differ, political cases excepted, the presumption is strongly in favour of the opinion delivered by the learned and practised member of the tribunal."

Section 54. "We have thought it expedient to limit the right of applying to the Supreme Court," that is, to the aforesaid "learned and practised member of the tribunal," "on matters of fact, to those cases in which at least one assessor is dissatisfied with the judge's decision." Thus the single opinion of the "practised and

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and learned member," shall outweigh, on matters of fact, "the unanimous opinion of any other 12 persons; but the opinion of the lay judge, no matter how well "practised," if opposed by only one voice, shall, because the judge is not a "learned member," be viewed as so unsafe that his judgment shall come under the review and final decision of the "learned member," whose opinion is preferable to the unanimous opinion of 12 of the most honest and intelligent inhabitants of these Straits.

33. The climax of this remarkable preference of the Indian Law Commissioners consists in this, that the assessor, whose single opinion shall shake the judgment of the Court, has ample means of explaining the grounds of his dissent, and therefore of correcting any, should there exist any, misunderstanding or want of information on the part of the Court, three-fourths of whom entertain a different opinion; but the professional judge may be and may remain, ignorant of "the arguments that may occur to them," that is, to 12 persons of unanimous opinion "in favour of their own view."

I have, &c.

Prince of Wales' Island,
9 September 1842.

(signed) *J. Garling*,
Resident Councillor.

Abstract of the Resident Councillor's Letter to the Honourable *S. G. Bonham*, Governor, &c. &c. No. 302, dated Prince of Wales' Island, 9 September 1842.

1. Acknowledging receipt of Law Commissioners' Report, 8 February 1842.
2. Proposed exclusion of the Governor from the court.
3. Probability that some such officer will be retained, and if retained, of his participating in the judicial administration.
4. If so to participate, the proposed system needs to be correspondingly modified.
5. This question will not be further considered.
6. The *lex loci*.
7. Mr. Murchison's proposal respecting court agents, and the use of the Malay language.
8. Concurring that court agents should be excluded from the lay courts, or limited to a certain extent.
9. Of the use of the Malay language.
10. Objections against the measure.
11. Benefits of the existing system.
12. Suggesting the continuance of the present system.
13. Of granting translations of the record.
14. Permanent presence of a professional judge desirable.
15. Certain formalities to be rendered unnecessary.
16. Of the cases to be reserved for the professional judge.
17. The professional judge's distribution of cases.
18. Of interrogatories *de bene esse*.
19. Province Wellesley Court.
20. Of appeals.
21. Limitation of professional judge's power of calling for records, &c.
22. Of securing the presence of assessors.
23. Of the periodical statements.
24. Writing and business should not be accumulated if to be avoided.
25. Of the petty sessions.
26. Of juries.
27. Military officers to be amenable to the local courts in cases under 400 rupees.

28–33. Observations respecting the extreme degree of preference given by the Law Commissioners for the professional judge.

(signed) *J. Garling.*

Legis. Cons. 30 Dec. 1842. No. 14. Enclosure.

Remarks by Mr. *Rodyk*, Acting Registrar in the Court of Judicature at Penang, on the Suggestions offered by the Law Commissioners for a new System of Judicature in the Straits; dated Penang.

1. The Law Commissioners in their Report to the Governor-general of India, have recommended, in substance, a fundamental change in the entire system of judicature in operation at the Straits settlements. The necessity of some alterations cannot be denied when the circumstances of these settlements are taken into consideration and compared with what they were in 1836, the date of the present charter, independent of the many inconveniences and difficulties arising from the separation and distances of the three stations from one another, which the framers of

of that document were ignorant of, or overlooked, but it may be questioned whether the necessity exists to the extent the Law Commissioners suppose it.

2. The "most weighty objection" they found urged against the present court is, that "it is maintained at an expense quite incommensurate with the population and resources of these settlements," while they admit the objection as to its unsuitableness to "have been successfully refuted." Acting upon the objection thus urged, and with the manifest object of introducing a more economical system, they recommend the surrender of the charter, and consequent abolition of the present Queen's Court, and to substitute a system of courts to be superintended by a professional judge, aided by the resident and assistant resident at each station, and to be modelled after the subordinate civil and criminal courts proposed for the presidency of Calcutta, subject to such alteration as the local position of these settlements call for.

3. In developing their plan, they recommend many things worthy of consideration, even in modifying or remodelling the present Queen's Court, but their system is extremely complicated, and instead of removing it, adds greatly to the evils of the existing one. This is apparent with reference to the connexion of the judicial with executive functions, the circuits and the appeals.

First. The connexion of the judicial with the executive is, in the avowed opinion of the Law Commissioners, an evil; and in this opinion the Straits community universally concur. On the plea of "necessity," the Law Commissioners not only continue, but increase the evil, by proposing an additional executive lay judge, for each station. If there be any necessity for introducing a new system, or of effecting alterations in the present one, the separation of the judicial from the executive claims primary attention, and if the connexion be allowed to exist, it should only be under such provisions as will restrain it from operation except on peculiar and extraordinary occasions, though an entire separation, if possible, would be preferable, as conducive to simplicity in plan, and to the efficient and impartial administration of justice. Such a separation does not appear incompatible even with the economical views of the Law Commissioners. For if these settlements be so poor as the Law Commissioners have been led to believe, why should they not be provided with professional judges on the same scale of salaries as are paid to professional judges in other dependencies of the empire? The large amount allotted to the executive officers for their participation in judicial business, viz. 3,700 rupees monthly, or 44,400 annually, would be more than doubly ample for this purpose. If, again, the circuit expenses and a due proportion of the steamer's expenses on account of the Judicial Department be added to the above amount, the annual sum may be, at the lowest estimate, taken at 50,000 rupees. The whole judicial business at each station, exclusive of the police, and the local magistrate's duties, might by a judicious arrangement and a properly regulated system be performed by a professional judge. (*Vide* Appendix (A.) Until this is proved to be impossible (for Penang at least) the plea of poverty ought not to avail to the prejudice of this station, which has been the continued residence of the professional judge for upwards of 34 years.

There is, however, a wide difference of opinion as to the reality of the poverty of these settlements. The Law Commissioners would do well to reconsider theirs, and view the subject, not only in the light Mr. Young has placed it before them in his evidence, but in comparison with the resources of other dependencies of the empire, if put upon the same footing as the Straits settlements.

Secondly. The circuits, which form an unavoidable appendage of the Law Commissioners' plan, are in themselves the source of expense, and more or less productive of uncertainty, delays, disappointments, and many other inconveniences. What, for instance, is to prevent the recurrence of the order for the steamer to proceed to another quarter of India for state purposes, or for the release of captives, or of its absence when required while in pursuit of pirates, or undergoing repairs? The consequence of any of these recurrences would be a total derangement of judicial business. The nearest approximation to regularity and despatch would be to have a vessel entirely devoted to the purposes of the court. This, however, would be expensive, and would not get rid of the intricacy of the system. If Malacca be made a dependency of Singapore, from which it is only half the distance it is from Penang, the plan of having two professional judges would be the simplest, the least expensive and inconvenient, and would do away with what is truly complicated and intricate in the Law Commissioners' plan.

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Thirdly. Appeals form a prominent feature in the Law Commissioners' plan; a system in which so large a proportion of the judicial business is allotted to the lay judges in two of the three stations cannot be complete without them. A tribunal immediately superintended and conducted by a professional judge, with liberty to parties on showing sufficient grounds, by affidavit or affirmation, to appeal from his decisions to the proposed college of justice in every case, and in some cases from the college to the Queen in Council, would suffice for all the purposes of these settlements. In most cases before such a tribunal parties would be satisfied with a rehearing, and it may be presumed that if there be grounds for appealing, a professional judge would not be backward in granting rehearings. According to the proposed plan, reasoning from experience, the time of the resident and professional judge on circuit would be occupied as much with appeals as with original causes. In 1827 when Sir J. Claridge occupied the bench, appeals from the court of requests were so numerous as to average from five to ten every week, owing to the facility with which they were granted; a dissatisfied party had only to express his wish, and pay down his three dollars, which was the fee, and he obtained his appeal in less than half an hour, with which he ran over to the Court of Judicature to get it filed, and a day fixed for hearing. Sir J. Claridge, finding that he had to affirm almost every decision of the Commissioner, passed an order requiring an affidavit of the grounds for appealing, and the transmission of the Commissioner's record of the proceedings before him for consideration previous to granting any appeal. The practice thus introduced obtains, at Penang at least, to the present day, and it may be supposed works no injustice, for appeals continue to be made in the mode prescribed, averaging perhaps from one to three a month; while it is reasonable to infer that in this small number the appellants act conscientiously, though often from mistaken views and misconceived rights, seldom from a litigious spirit or desire to cause delay or vexation.

4. The jurisdiction and procedure of the proposed substituted court next come under consideration; and first, as to the jurisdiction of the civil courts.

The division and subdivision of labour, and the assortment and distribution of cases for three separate tribunals, are necessarily part and parcel of a complicated system. All this would very properly form the details of a court under the conduct of a professional judge, to whom, on the supposition that he is to undertake all the judicial business, the distinction and separation of cases involving law points or not would be immaterial, but whose arrangement would be governed by classification in accordance with amount only. The view taken by Sir B. Malkin, and adopted by the Law Commissioners, as to the bulk of the business of the Straits court, is no less applicable to all the courts in England and all her colonies and dependencies; the bulk of business there, as in the Straits, consists in enforcing certain description of rights; and yet, except in the Straits, this duty is nowhere entrusted to men of sound sense and discrimination as such only. If by "sound sense" is meant "common sense," there are no two men, in the opinion of our present recorder, "who are agreed on the point." This qualification in the lay judges presupposes a guarantee on the part of those who appoint the executive officers, that they will always select for the Straits government men "of sound sense" and "discriminating understanding;" but such a provision is obviously in repugnance with the system of patronage pervading the East India Company's service. A professional judge simplifies the whole system and obviates every difficulty.

Secondly, As to the procedure of the civil court.

The absence of the Report on the procedure of the proposed subordinate civil court for Calcutta renders it premature to discuss its applicability here. The practice described by Sir B. Malkin as having been pursued by him was and still is the preliminary step in most cases, in the registrar's office at Penang: a notice to the party complained against is the first process to bring the parties together. There is, however, in many cases now a previous direct application to the recorder himself by petitions, drawn up by a class of men apparently little versed in English, which cost, according to their length and the circumstances of the parties, from one to five dollars each. In some of these cases the parties are brought together on a fixed day, their disputes heard and settled; in others they are referred to the registrar, and desired to bring their actions. These petitions were much discountenanced by Sir B. Malkin, as in most of them he found the plaints to be misstated or misrepresented, and facts concealed to bias his mind. He, however, did not remain long enough to enforce the practice of complainants appearing and stating their story without the medium of these petitions. Sir E. Gambier discountenanced

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nanced the practice altogether, by referring these petitioners to the registrar's office, where he said every one had a right to have his complaint reduced to writing, and brought forward in the regular way. On the first establishment of the Queen's Court at Penang in 1808, the English pleadings in law and equity were adopted and strictly followed, as it would appear by the records. In the time of Sir Ralph Rice there was a wide departure from that practice; the pleadings assumed so simple a form that they certainly would not be tolerated at the present time. The practice which obtained under the rules of practice drawn up by Sir John Claridge for the existing Queen's Court was neither strictly technical, nor so totally devoid of technicality as prevailed in the time of Sir R. Rice. The practice continues much the same at the present date; if anything, it tends rather to uphold the technicalities of the English pleadings. There have been causes in which the pleadings have been altered at different stages for informality or defectiveness in respect to pleadings; and, on the other hand, there have been instances where objections have been taken to informalities, &c., and overruled, especially under such circumstances as it was apparent to the court that the ends of justice would have been defeated by any compliance. It is, therefore, very desirable, both with the view of facilitating the duties of the court officers and of establishing a consistent and uniform practice, that the civil procedure be distinctly and precisely settled.

Thirdly, As to the jurisdiction of the proposed criminal courts.

The same objection exists in the division and distribution of labour for three separate tribunals. The suggestion for a sub-criminal court to be kept continually open for certain classes of offence is excellent and worthy of adoption, and in itself a humane provision, inasmuch as it will save many an innocent man from incarceration for an indefinite period, as heretofore, before his trial. The system in this respect would be much simplified by giving jurisdiction to the local magistrate to try and dispose of all petty offences short of larceny and felony; and to the professional judge to entertain in his sub-criminal court all larcenies and felonies, reserving such as may appear to be peculiarly aggravated or difficult, as well as all capital offences, for a higher tribunal, in which he may be aided by a jury.

Fourthly, As to the criminal procedure.

This, too, if in strict accordance with the mode of proceeding in English criminal courts, would be inconvenient as applied to the tribunals of the lay judges, and would occupy too much of their time as executive functionaries. It is, however, well suited for the system, which, by giving jurisdiction to the local magistrate over a certain description of offences, to be disposed of in the most simple and easy form, would reserve all other crimes and offences for trial before a professional judge in the mode prescribed. The extinction of the grand jury and the substitution of assessors in lieu of a jury, and the reduction in the number of the jury, and the dispensing with their unanimity, are subjects for serious consideration. In the absence of the Law Commissioners' Report, and the draft Act referred to as to the criminal procedure recommended for their proposed court, any further remarks here would be premature.

Fifthly. As to ecclesiastical jurisdiction, the Law Commissioners have made no provision or the slightest allusion to the subject. This is an important omission, and remains unexplained. In Penang the duties of the court, in its ecclesiastical jurisdiction, are extensive, and in some respects intricate, watching over the faithful administration of numerous estates, and the interests and rights of absent as well as resident parties. The charter confers large and discretionary powers on the court, yet there have always been a variety of opinions as to the mode and extent of their exercise. The system, as it exists, is defective, and requires to be defined; and in respect of the native population it ought to be totally remodelled. Under Sir B. Malkin's judicial administration the ecclesiastical fees, which before that time were chargeable alike, whether estates be rich or poor, were revised, and a graduated scale substituted. This alteration made the court accessible to every estate, however poor, and brought on a large addition of labour without adequate remuneration. The annexed table exhibits the proportion of estates brought in under the original charges, and since the substitution of the graduated scale. In considering and providing for this branch of the court's duty, or even in modifying and remodelling the present charter, the object to be kept in view, with reference at least to the natives, is the ignorance of the people and their oft misconceived notions as to the power conferred by the court on executors and administrators, and consequent abuse of it. There is no plan, however, except what must be selected from a choice of evils. Perhaps the most feasible would be

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be to appoint a general administrator for all native estates where no will exists, with suitable rules for his guidance and conduct, who shall be under the immediate control of the court, and be remunerated partly by a small per-centage on the value of the estates he administers, which, by his accounts, shall exceed a certain amount, and partly by salary. This would tend to introduce regularity and confidence, and put a stop to a prolific source of litigation, in which lands and other property, interests, and rights are involved.

5. The subject of law agents, or legal advisers, as they are designated by the Law Commissioners, is only indirectly alluded to. From what is suggested, it would appear that the admission of native pleaders before the tribunals of the Law Commissioners' system is contemplated, though it does not appear that English pleaders are to be excluded. The objections to native pleaders, or "vakeels," as they are styled in the Indian courts, are numerous and self-evident in the present condition of the natives, looking even to the most respectable and best educated among them. Circumstanced as thsee settlements are, there can be no question as to the utility of legal or professional advisers or law agents. They may be said to be just tolerated in the existing court; and parties who employ them, whether from inclination or necessity, with but rare exceptions, must pay for the "luxury." But whether the Law Commissioners' plan be adopted, or the present court continue to exist as now constituted, or otherwise modified, the subject of "law agents," embracing a view of their acquirements and qualifications, and the rules for their admission, guidance, and control, &c., is worthy of serious consideration. If, under any system of court, the working establishment be so reduced as to drive suitors to the law agents exclusively for the preparation of pleadings, the urgency for such a control and superintendence is still more imperative. An adequate provision requiring all suitors to come with their pleadings prepared by an admitted practitioner of the court, would greatly relieve a small establishment; the proportion of consequent loss in the fees would not average the salary of an extra respectable clerk, while the office duties would be simplified, and, what is everything with the Law Commisioners, the work would be as effectually performed as if they had provided a full and efficient establishment for it. Under any circumstances, however, save these places from the vakeels or native pleaders which infest the Indian courts.

6. The results of the Law Commissioners' plan are, an expenditure for purely judicial administration of 106,640 rupees, and a consequent reduction of present charges to the extent of 95,294 rupees. There are considerations in providing for the machinery of a court which are naturally enough disregarded in scheming for economy. At any rate these considerations, in a greater or less degree, have been overlooked by both the Governor-general and the Law Commissioners in the preparation of their lists of establishment. The scale of allowances to many of the officers could not well have been lower than what they have proposed. The question, however, is not whether these allowances can procure hands to undertake the work, but will they suffice to secure the services, even on an emergency, of trustworthy as well as competent men, who claim respect, and have a name and character to maintain. There surely was some motive, some object, which induced so imperative a call from the court on the government for the existing contract and heavy expenditure; in fact the temptations to and opportunities for corruption and bribery, in every degree and shape, are so great and so numerous, to which the machinery for dispensing justice is exposed, that there can be little doubt as to the leading motive and main object by which the functionaries, both of government and court, were influenced. It is true that there was much opposition on the part of government in acceding to the court's requisition, because the responsibility of providing against the evil rested with the court. On the removal of the recorder it was not deemed safe to interfere beyond a small reduction in the registrar's pay, though it was at the same time insisted that the senior clerkships of two stations, which had been left vacant, should be filled. There are not instances wanting in the history of India when the East India Company, acting upon the maxim that "prevention is better than cure," placed their servants and the Queen's judges on a footing to be above all temptations. The same maxim claims attention here. Another consideration is, the numerical strength of the establishment, which, for Penang at least, is too limited in some respects for the efficient performance of even the ordinary duties in the registrar's office, independent of other casualties, as sickness, &c.

7. Appended

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7. Appended is a list of establishment for either a barrister's or recorder's Court; it is not presumed that it will be sufficient for all purposes under a change of system, but it is intended to be contrasted with the lists appended to the Report; and allowing the plea of poverty to be available, it is prepared upon the following suppositions:—

1st. That the charter shall remain and be modified to suit the views suggested here, and consequently, that there be a Queen's remodelled Court.

2d. That Singapore and Penang shall be separately governed and be immediately under the Supreme Government, the former having Malacca as a dependency, with a resident and three assistants, the latter having Province Wellesley as a dependency, with a resident and two assistants.

3d. That Singapore and Penang shall each have a professional judge and the judicial establishment enumerated in the list appended.

4th. That the residents of Singapore and Penang shall be lay judges of the Queen's Court at their respective stations, under a provision in the charter defining on what occasions and for what purposes their functions as such shall be exercised.

5th. That there be a provision in the charter authorising the residents and professional judges, or any other competent authority in India, to appoint commissioners for the judicial duties at Malacca and Province Wellesley respectively, and to define the extent of their jurisdiction in both civil and criminal matters, the mode of appeal, &c.

This sketch does not preclude the employ of as many functionaries for government purposes as may be deemed requisite. It only includes the number employed under the Law Commissioners' plan for the purpose of comparison in the expenditure.

The list of establishment is prepared with a twofold object, namely, the applicability of reduction to the Queen's Court, whether the professional judge be designated as "recorder," or "barrister," or "judge," and the desirableness, if not necessity, of preserving the fountain and administration of justice pure and above all temptations. The following particulars also may be deserving of attention in reference to some of the individual officers.

The registrar, if not professionally educated, should at least be an individual who has bestowed some attention on the subject of law and its administration, and not merely a practical man in the routine of an office.

The second clerk should be at least proficient in English, to whom the prospect of succeeding to the senior clerkship may be held out.

The writers or copying clerks may be selected from some of the educated natives in the place.

The interpreters should be proficient in English; the responsibility of this office is much underrated; but some estimate may be made of it, if it be only considered how much involving both life and property depends upon correct interpretation or translation; the labour of interpreting too is very great, often without intermission or relief, and continuous from day to day; the remuneration proposed by the Law Commissioners is inadequate to the responsibility, duty, and labour of this office, or to secure integrity as well as efficiency, and at the least should be doubled.

The sheriff should be a paid officer, and the fees of his office should be carried to the general account of fees paid into the treasury.

The Commissioner for Malacca, whose jurisdiction will be more extensive than that which need be assigned to the Commissioner for Province Wellesley, ought of course to be paid in the same proportion.

The division of labour as shown in Appendix (A.) is intended simply as an illustration. The actual quantum of judicial business in this station, by a judicious arrangement and a diligent use of time, will not be found to be more than a professional judge can get through.

The Commissioner for Province Wellesley, with a view to the convenience of the people there, ought to be empowered to try all civil causes arising there not exceeding 50 dollars in amount, with liberty to suitors either to select the professional judge's tribunal or to appeal from the Commissioner's decisions on grounds shown.

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shown. He ought also to be the coroner there, and the assessment officer for Penang.

The superintendent of police and local magistrate are officers in the Straits differing in name only, so that the government functionaries in Penang and Province Wellesley who fill the former should perform the duties of the latter, and would be able without inconvenience to perform the duties of the accountant-general to the court and the superintendent of convicts.

Appendix (A.)

The Apportionment of Labour for the Professional Judge.

Monday.—To hold court for trial of all civil causes exceeding 50 dollars in amount.

Tuesday.—To hold court for ecclesiastical matters primarily, but not to exclude civil matters if time permit.

Wednesday.—To hold the sub-criminal court for trial of all offences not capital or peculiarly aggravated.

Thursday.—To hold a court of conscience for trial of all civil cases not exceeding 50 dollars in amount.

Saturday.—To hold court for hearing of appeals from Province Wellesley, and disposing such matters and business as might remain over during the week.

The criminal court for capital offences to be held regularly once every quarter; and as cases for its cognizance will be comparatively reduced, this is not likely to occupy beyond a week.

Appendix (B.)

TABLE showing the Number of LETTERS OF ADMINISTRATION and PROBATES granted in the Court of Judicature at *Penang*, from August 1827 to 31 August 1842.

	LETTERS OF ADMINISTRATION.	PROBATES.	
In 1827, from August -	6		
1828 - - - -	19		
1829 - - - -	11		
*1830 - - - -	11		
*1831 - - - -	- - - -	52	- - under the original table of fees.
*1832, from June - -	8		
1833 - - - -	16		
1834, to March - -	1		
1834, from March -	46		
1835 - - - -	68		
1836 - - - -	48		
1837 - - - -	18		
1838 - - - -	23	96	- - under the substituted table of fees.
1839 - - - -	23		
1840 - - - -	54		
1841 - - - -	71		
1842, to August - -	56		

* In 1830, from 1 July, and 1832, to 1 June, the court was closed.

Appendix (C.)

LIST of Establishment for a Queen's Court and a Modified Charter, with Allowance.

	As limited to the Amount proposed by the Law Commissioners.				As desirable, to insure Integrity, Efficiency, and Respectability.				
	Singapore.	Malacca.	Penang.	P. Wellesley.	Singapore.	Malacca.	Penang.	P. Wellesley.	
Professional Judge	1,600	- -	1,500	- -	2,000	- -	1,800	—	
Commissioner	- -	750	- -	300	- -	750	- -	300	- - this officer, if separate from the assessment list, might be the assessment officer, and be provided with additional establishment and allowance from the assessment funds.
Registrar	- -	- -	- -	- -	800	- -	800	—	
Head Clerk	400	300	400	150	300	300	300	150	
Second Clerk	200	- -	200	- -	150	- -	150	—	
Assistant Clerk	100	50	100	50	100	50	100	50	- - 2 for Singapore, 2 for Penang, and 1 for the dependencies respectively.
Chief Interpreters	200	100	200	50	400	100	400	50	Ditto - - ditto - - ditto.
Chinese Interpreter and Writer.	50	25	50	25	50	25	50	25	
Chulia and Malay Writer.	20	25	20	10	20	25	20	20	- - to perform the Shroff's duty at the dependencies.
Crier	20	- -	20	- -	20	- -	20	- -	- - this allowance might be given to one of the Interpreters to perform this duty.
Shroff	20	- -	20	- -	20	- -	20	—	
Sheriff	200	- -	200	- -	200	- -	200	- -	- - this office might be abolished at the dependencies.
Bailiffs	50	40	50	40	50	40	50	40	
Under Bailiffs	20	20	20	20	20	20	20	20	
Coroner	100	100	100	100	100	100	100	100	
Peons for Judge	30	- -	30	- -	30	- -	30	—	
Peons for Commissioner.	- -	10	- -	10	- -	10	- -	10	
Peons for Registrar's Office.	30	10	30	10	30	10	30	10	
Peons for Coroner	10	10	10	10	10	10	10	10	- - this duty at Malacca might be performed by the Head Clerk for this extra allowance.
General Administrator for Native Intestate Estates.	250	60	250	- -	300	60	300	- -	- - at Singapore and Penang this officer will be allowed a certain percentage on every estate.
Clerk or Writer	40	- -	40	—					
Peon	10	- -	10	—					
Monthly Total, *C.Rs.*	3,350	1,500	3,250	785	4,600	1,500	4,400	785	
Annual Total „	58,200		48,420		73,200		62,200		
Grand Total „	1,06,620				1,35,420				
Result „	20 under.				28,780 in excess of the Law Commissioners' proposal.				

Remarks by Mr. *Church*, Resident Councillor at Singapore, on the proposed Alteration in the Court of Judicature in the Straits.

Legis. Cons. 30 Dec. 1842. No. 15.

Singapore, 24 September 1842.

Enclosure.

I have perused with attention commensurate with the importance of the subject the printed Report, dated the 8th February last, of the Indian Law Commission, upon the question of abolishing the existing Court of Judicature of the Straits, and substituting in lieu thereof an entire new system for the administration of civil and criminal justice.

2. It has been my earnest and anxious endeavour in considering this grave question to divest my mind of local prejudices and predilections, which it must be acknowledged are too often engendered by having been long familiar with one unvaried system. Whatever scheme may eventually be adopted it is not likely to affect me materially; I have therefore less hesitation in recording my opinion with the utmost freedom. My sentiments, such as they are, are the offspring of much reflection and experience; and my chief desire is, that the inhabitants of the Straits settlements should be in possession of as large a portion of the privileges of British subjects, consistent with their varied condition and the public welfare.

3. As the Hon. the Governor (Mr. Bonham) has for a protracted period bestowed more than ordinary attention to judicial business, and who doubtless will deem

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deem it expedient to communicate to higher authority the result of his practical knowledge and experience, it is scarcely necessary for me to enter into any lengthy detail. I shall therefore confine my opinion to a few prominent points which appear to me to be peculiarly objectionable in the proposed scheme.

4. I however deem it an incumbent duty to premise, that it is my deliberate opinion that the present system, with all its defects and incongruities, is unspeakably preferable to the complex machinery propounded by the Law Commissioners in their Report now under consideration. The condition of the inhabitants of these settlements is quite dissimilar to the continent of India; they have peculiar wants of which a remote legislature can imperfectly judge.

5. I am not one of those who would venture to recommend that the entire judicial business be transacted without the presence of an English professional judge; indeed I consider one indispensable to settle intricate points of law, which will and must arise as commerce extends. No lay judge, however acute his intellect, can be competent to decide such questions with satisfaction to himself or to the mercantile community. "It is the duty of a judge to pronounce his decision not simply according to his own opinion of justice and right, but according to prescribed rules; it is the judgment of the law, not his own which he delivers." We know to become conversant with the "prescribed rules," deep research, assiduity, and experience are indispensable.

6. Candour necessitates me to record, that even at present I preside on the judicial bench, hear, and determine causes with very different feelings to what I should do were there no professional judge in the Straits. During a trial, should any complicated question arise (which certainly seldom occurs), judgment can be postponed without any very serious inconvenience to the parties concerned until the lay judge has an opportunity of consulting the recorder.

7. Singapore, from its position and extensive commerce, is clearly the most eligible station for the residence of the professional judge.

8. The most objectionable feature in the scheme recommended by the Law Commission is by far the system of indiscriminate appeals in all civil cases. Should this be persevered in, a greater calamity could scarcely befal the Straits settlements: the incontrovertible consequence would be to encourage extensive litigation, prove dilatory, and of necessity be attended with considerable expense to parties, evils which scarcely exist under the present system.

9. If every case, however simple, which is heard and decided by the superior lay judge is open to appeal to the professional judge, and that learned person is allowed to exercise the special powers accorded to him in the 42d para. of the Report, there will be no end to litigation; it will, moreover, be exceedingly harassing to the lay judge, and tend to bring the executive officers holding judicial appointments into contempt, instead of being, what they ought to be, the immediate objects of esteem and confidence.

10. I have no hesitation in saying that I conceive a lay judge, who from a long residence in the country, intimate knowledge of the language and manners of all classes of natives, will be found generally more competent to judge correctly in matters of fact than a professional judge who has spent the best years of his life among Europeans, and prone to believe everything because it is sworn to. It has been said by one who well knew and had sketched the native character, "It is not in causes where Hindoos or Mahomedans give evidence that a fact is proved because it is sworn to; we are compelled to take a greater latitude in judging by probabilities than a strictness of English judicature in general allows."

11. No one, I apprehend, will affirm that the minds of our mixed inhabitants are of a superior texture to those of the Hindoos and Mahomedans of India. My own experience enables me to say the Chinese and others are in a state of moral degradation almost beyond conception. I witness daily, nay hourly, instances of natives uttering the most deliberate falsehoods on the most trifling occasions; and what will they not fabricate when their personal interest is concerned?

12. In the 30th paragraph of the Report, it states, "The population of these settlements generally is of a very mixed character; consisting for the most part of Malays, Chinese, and natives of the Archipelago, whose litigation will be commonly

monly about matters to be governed by their own usages." Now I submit to any dispassionate authority, whether Mr. Garling for instance, who has been in the country for 30 years, is not more competent to judge correctly in such matters than a recently arrived barrister, who knows nothing of the native language or the manners and habits of the different classes.

13. If appeals from the decision of the senior lay judge are allowed, there should be some limitation as to amount, say 2,000 rupees and upwards.

14. If I accurately understand the bearing of the special powers delegated to the professional judge, as set forth in the 49th paragraph of the Report, every sentence passed by any subordinate court is liable to be altered and quashed by the professional judge, or, in the words recorded, " to pass such orders upon it as may seem fit." If such a system becomes law, it will place the chief civil authority of the station in a most unenvied position, and be a prolific source of pecuniary advantage to law agents, without any public benefit whatever. Under such a system what individual, however guilty, will rest satisfied with the decision of the lay judge? If possessed of friends or a few rupees, there will be no difficulty in getting a petition drawn, backed probably by affidavits totally destitute of truth; these documents, from their apparent speciousness, may induce the professional judge, who may be perfectly ignorant of the character of the people, to call for the records and at once abrogate the sentence passed by the lay judge. If it is thought inexpedient to confide to the resident the extensive judicial powers laid down in the Report, without the check suggested, let them either be abridged, or deprive the chief local functionary of all judicial authority, rather than allow the extraordinary interference on the part of the professional judge, as proposed in paragraph 49.

15. If the court of the superior lay judge is to be open continually, I apprehend there will be some difficulty in securing the attendance daily of three assessors of character and respectability; such duties would I conceive fall exclusively on the Europeans: there are insuperable objections to natives being assessors; in fact, there would be some difficulty in finding half a dozen coming under the denomination " of character and respectability."

16. As to the financial part of the plan, I have only to observe, that the sum of 400 rupees a month as salary for the head clerk or rather registrar at Singapore, is altogether inadequate to enable him to live in a manner becoming his situation, much less to make a provision for a family. A suitable salary is considered a necessary guard of every judicial system; it is also necessary to secure the exclusive employment of the time and talents of the local registrar; it is moreover of importance to make such an office the object of able and respectable men, without which the arduous and responsible duties will never be efficiently discharged.

17. There appears to me a serious mistake in the average receipt from fees; in the 44,427 rupees, I am disposed to think the fees of Court of Requests have been included. At Singapore the fees received from the Court of Judicature during the year 1841-42, aggregated rupees 14,207. 4. 3. which I estimate is equal to the amount of the two other settlements.

18. I have endeavoured to point out the most objectionable features in the posed scheme; its inaptitude to the Straits' settlements must I think be manifest to every one who possesses any local knowledge and experience, and if passed into a law without extensive alterations, will I fear be productive of evil instead of benefit; I therefore in conclusion most humbly but most earnestly solicit the supreme authority, in its wisdom, not to countenance such a system of judicature for Prince of Wales' Island, Singapore and Malacca.

(signed) *T. Church.*

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Recorder's Court: Registration of Conveyances.

REMARKS by Mr. *Caldwell*, senior, Sworn Clerk in the Court of Judicature at Singapore, on the Suggestions offered by the Law Commissioners for a new System of Judicature in the Straits.

To the Honourable *S. G. Bonham*, Esq. &c. &c. &c.

Dear Sir,

Legis. Cons. 30 Dec. 1842. No. 16. Enclosure.

I DO myself the honour, in compliance with your request, to state a few observations that have occurred to me on perusing the Report of the learned Commissioners on the subject of a new Court of Judicature for the Straits, although probably their only title to merit notice would be that which an experience of 14 years' servitude in the present court might give them.

In reference to the constitution of the intended court, the Commissioners propose, in

Para. 31. That Singapore shall be the station of the chief court, which is to be composed of the barrister, the resident councillor, and the assistant resident.

Para. 32. Cases involving points of law, cases concerning government, and cases amounting to 10,000 Company's rupees, shall be reserved for the professional judge; all other cases to be disposed of by the resident and his assistant.

Para. 34. At Singapore the professional judge shall perform the distribution of cases; in his absence to be done by the superior lay judge; and

Para. 35. At Penang and Malacca this distribution to be performed by the lay judge ordinarily.

It would appear, from the foregoing sections of the Report, that there is to be at each station but one civil court, which is to be composed of three judges, whose duties and powers are wholly distinct from each other, each to sit alone in the performance of his particular duties, and each, in reality, holding a distinct court; but, although the duties of the professional judge appear to me to be pretty clearly defined, the Report seems wholly silent as to the distribution of cases between the lay judge and the subordinate judge. It cannot, I presume, be contemplated to give the subordinate judge the power to try the same class of cases as the superior lay judge; for if their powers, in that respect, are to be equal, whence arises the distinction in terms, or the subsequent provisions for appeal from one to the other? What portion, then, of the judicature is to be assigned to the superior lay judge, and what to the subordinate judge, the Report does not declare. It may be intended that all cases, of what nature soever, from one dollar up to a million, shall in the first instance be laid before the professional judge, when present, who, after having supplied himself, will parcel out to the lay judge and the subordinate judge such cases as the professional judge shall think fit shall be tried by them respectively; but it occurs to me that, if even this be intended (and it is the only true interpretation I can give to paragraphs 33 and 34 of the Report), the necessity for the very extensive provisions for appeals from the subordinate judges to the professional judge, who himself makes the "distribution" of cases, is, in a great measure, done away with.

But, although the intentions of the Commissioners in this respect do not appear to me to be so clearly and fully expressed as they might have been, and although it may be somewhat difficult, in consequence, to say what the effect of their system of judicature may be, or how the three judges are to divide their time for their respective sittings in one court; I am, nevertheless, for the reasons hereinafter mentioned, strongly inclined to consider the plan as objectionable, and likely to prove a far less efficient system of judicature than the one at present in force. This leads me to the consideration of

Para. 38, which says, that from the decision of the assistant an appeal shall lie to the superior lay judge, to be determined by him, or to be reserved for the professional judge, if upon points of law. From the decision of the superior lay judge, in original cases, an appeal shall lie to the professional judge; and from the decision of the professional judge, in original cases, an appeal shall lie to the College of Justice in Calcutta; and also

Paras. 39, 40, 41, allowing special appeals from the decision of the professional judge in cases decided originally by the superior lay judge and subordinate judge, and from the decision of the superior lay judge in cases decided originally by the subordinate

subordinate to the college in Calcutta; and the transmission of such appeals and answers thereto through the courts in the Straits to Calcutta.

The provisions for appeals contained in these sections are some of the most important, and perhaps most objectionable, in the whole Report;—important, because they afford to the injured suitor the opportunity of acquiring from one judge a right which the arbitrary or unjust decision of another judge may have withheld from him;—objectionable, because of the too great facilities of appeals which they allow, thereby creating an opening for and an encouragement to litigation, which, it appears to me, it ought rather to be the endeavour of every court to prevent. In a mixed population like ours in the Straits, consisting of men of various countries and creeds, widely differing from each other in their habits and modes of thinking, it is scarcely possible to expect that, in a case where both parties maintain that they are in the right, the decision of one judge, however correct in itself, will satisfy both. The dissatisfied party will be but too ready to avail himself of the great facilities allowed, and the chance of having that decision reversed by appeal to a superior judge; and, considering the great propensity to litigation which characterises the great majority of our native population, instances of this nature must become of frequent, nay daily occurrence.

The facilities of appeals allowed by these sections, besides other evils with which they are fraught, have that of subjecting an innocent party to be summoned from one court to another, at the caprice, or worse feeling of an obstinate suitor, at a great sacrifice of time, which in some instances may be attended with pecuniary loss, and upon a question that may have already had a full investigation and an impartial decision. Indeed, since the "distribution" of cases is to be made by the professional judge, when present, who will try all cases involving points of law, the appeal from the decision of a subordinate judge must in general only be upon a point of fact, regarding which different opinions may be entertained by different persons.

Para. 42. "The professional judge shall have the power to call up to his court any cases, original or appealed, which from representations made to him he considers to be proper subjects for adjudication by himself, as involving points of law."

I consider the special powers herein conferred on the professional judge over the courts and proceedings of the lay judge extremely objectionable, from the serious consequences which are likely to result from an undue exercise of those powers by the judge himself, and from their liability to abuse on the part of the suitor, by misrepresentations, in which, unfortunately, the native inhabitants of these parts are but too prone to indulge. A case in which questions of facts only may be in dispute may have been tried and investigated with diligence and patience by the lay judge, and postponed by him, either for further hearing or judgment, to a future day; the defendant foreseeing, from the nature of the evidence already adduced, that he is likely to lose, may in the meantime lay before the professional judge such an exaggerated statement of the circumstances as may induce the professional judge to believe that the case is not a proper one for the decision of the lay judge. The professional judge may therefore order the case to be laid before him; and though it may not involve an abstract question of law, he may nevertheless think proper (for he has the power) to try it himself; but what will be the consequence? I scarcely need tell one who possesses such an extensive knowledge of the character and morals of the natives as yourself, that the defendant, knowing better than he did before the weak points of his case, will have his witnesses in better training, if I may use the word, nay, he will supply himself with other witnesses to make up any deficiency in his evidence, and he may, after all, succeed in obtaining a judgment in his favour; whilst the lay judge who first tried the case, and had a better opportunity of judging of the correctness of the evidence, from the demeanor of the witnesses, his knowledge of their habits, &c., would have come to a very different, and probably more just conclusion. I have no hesitation in saying that this is a case extremely likely to arise under the system recommended by the learned Commissioners; and the effect of it would be such as to cast into insignificance the court and proceedings of the lay judge in the eyes of the natives.

Para. 52. "We consider that the general power of supervision proposed to be given to the professional judge, and the provisions for appeal we have suggested, will

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will be a sufficient check upon the subordinate judges, while the facilities which our plan will afford for consultation and reference between the inferior and superior judges will tend greatly to prevent errors."

With great respect for the opinion of the learned Commissioners, I trust you will pardon my taking it upon myself to remark that I believe there is much reason to doubt the soundness of the inferences here drawn. Indeed I would rather consider the facilities of appeals, and the too great power of supervision of the professional judge over the proceedings of the lay judge, as likely to produce quite the contrary result. It would be far preferable, in my opinion, if the practice in cases where a party feels himself aggrieved by the decision of a lay judge, were allowed to stand as has generally been adopted here. The aggrieved party should be instructed to set forth in an affidavit his grounds for a new trial as fully as the circumstances of the case will admit of; and upon such affidavit being laid before the professional judge, and strong grounds shown that the decision of the lay judge has been wrong in point of law, the lay judge should be consulted; and upon a new trial being granted, the lay judge should take his seat upon the bench with the professional judge at such new trial; and upon coming to a decision upon such rehearing, the lay judge should be permitted to give and record his opinion, should it differ from that of the professional judge, but the opinion of the professional judge should on the other hand overrule that of the lay judge, and it should also be final and absolute. There would be far greater probability of strict justice being done to all parties by this course of procedure (which is also far more dignified) than could possibly be expected from the proposed system of indiscriminate appeals; for if every decision of the lay judges shall be open to appeal, and liable to be reversed by the professional judge, what respect will be paid to such decision by the suitor? Indeed the lay judge himself would be disposed to give but a superficial examination of a difficult and intricate question, but rather leave to his superior the more arduous duty of a fuller investigation.

Before I proceed to offer any remarks upon the alterations in the criminal procedure, I would say a few words on the subject of Mr. Murchison's suggestion (*see* page 17 of the Report): viz.

That the Malayan language shall be the language of the courts, with the exception of the barrister's court, which should carry on its proceedings in English.

Which it is satisfactory to observe the Commissioners do not recommend the adoption of; for the only persons who would benefit (if any benefit could at all arise) by the introduction of the Malayan language in the pleadings, evidence, &c. would be the Malays themselves; and yet this class of people form the least important portion of any class of suitors who have ever resorted to the court at Singapore for redress. The principal litigants of these parts, as you are well aware, are the natives of the Malabar coast, and Chinese; and of these, the great majority understand and speak but very imperfectly the Malayan language, and no benefit could possibly accrue to them by having their pleadings drawn up in that language, which would have to be explained to them in their own language, in the same manner that the pleadings in English are at present, before they could be made to understand them.

As the professional judge is empowered to order up for investigation before him, from the court of the lay judge, any case he may think fit, if the suggestion of Mr. Murchison be adopted, he would find the pleadings, judgment, and record in such a cause written in a language which he is not expected to understand, and which from its poverty in words it would require great skill and knowledge to express intelligibly the various details of judicial proceedings. And in reference to the native suitors, this recommendation supposes them to be qualified, with the aid of interpreters, to conduct the trial of their causes in English, in the court of the professional judge, but to be incompetent to do so in the same language, with the same aid, in the court of the lay judge.

No inconvenience has ever attended the practice that has hitherto been adopted in regard to the use of the English language in pleadings, evidence, &c., except that which must always arise from the want of good and intelligent interpreters; and these we may never hope to obtain until the salary is made adequate to the responsible and arduous nature of the duties they are expected to perform.

Upon the subject of the proposed reductions in the registrar's establishment, I offer no remarks: first, because it would probably ill become me to do so; secondly, because I know no one more capable than yourself of judging of the total inade-

quacy

quacy of the small allowances proposed, to the increased duties which the proposed system will entail on the department of the registrar.

Paras. 44, 45, 46, 47, and 48, recommending extensive alterations in criminal procedure, do not appear to me to be materially objectionable, save in one or two instances. The abolition of the grand jury is an improvement.

The permission to appeal against criminal decisions seems wholly unwarranted where the judges have the assistance of assessors, the non-concurrence of one of whom in a verdict being a ground of appeal from the court of the lay judge to that of the barrister, and upon like grounds from the court of the barrister to the College of Justice in Calcutta. I have no hesitation in saying that this would give rise to much delay and dissatisfaction in the administration of criminal justice, and in reference to the class of persons who form the generality of criminals in these parts, would be attended with highly mischievous results. For the same reasons do I consider as equally objectionable,

Para. 49, Giving the professional judge power to call for the record of any criminal trial in the court of the lay judge, and to pass any orders upon it he may think fit; and the like power to the College of Justice in Calcutta:

Which power the professional judge or the college may think proper to exercise on every occasion that a dissatisfied criminal (and what criminal is ever satisfied with his punishment) may make application to them, upon real or fancied grounds, for a remission of his sentence.

With respect to the proposition of substituting a limited number of assessors instead of the present petit jury, I am of opinion that as the abolition of the grand jury will render a greater number of gentlemen available to serve as petit jurors, the present number ought not to be lessened; but of these twelve, I think the unanimous opinion of eight should be held sufficient either to convict or acquit, whilst the power of interference on the part of the judge over the verdict of such jury should be neither greater nor less than that which he at present exercises.

In reference to para. 44 of the Report, recommending that the criminal court of the lay judge shall be kept continually open, I think it would be found preferable in practice if it were to sit at short intervals, say once in a month; for if it is to be kept continually open, cases may be sent in to it every day for disposal, and often at a time when the lay judge's civil court may be sitting, which, as well as the lay judge's petty sessions, is to be kept continually open also. This mixture of cases conducted by one judge, and by one set of officers under him (who have also to conduct the business of the professional judge's court,) will be the means of creating confusion and irregularity from its complexity; and indeed if the lay judge is to keep continually open his civil and criminal courts, nearly the whole of his time must necessarily be occupied with judicial business alone, and he will have but little left to devote to the ordinary affairs of his government.

Upon the whole, the description of judicature recommended by the Law Commission does appear to me to be complex and unwieldy, and wholly unsuited to the circumstances and wants of these places: and I do certainly think, that had the learned Commissioners taken the present charter of the court into their hands, and expunged some inconsistencies which it undoubtedly contains, together with such of its provisions as have been found, upon the trial it has already had, to be unsuited to the circumstances of these settlements, and have allowed those that have been found to work well to remain; giving, with some modification, the same powers to the barrister of the new court as have been exercised by the recorders under the present charter, and to the lay judges in like manner, the result would have produced a far more efficient system of judicature for the Straits' settlements than the one they have recommended. It would have produced one more in accordance with the system that has hitherto prevailed here, to which the inhabitants have been so long accustomed, to which they have become attached, and in the working of which (where simplicity in the pleadings, suited to the capacity of all classes of the inhabitants, has been attended to), I have every reason to believe general satisfaction has been given and felt.

I have, &c.
(signed) *H. C. Caldwell,*
In charge of the Registrar's Department
at Singapore.

Singapore,
30 September 1842.

No. 3.
Recorder's Court: Registration of Conveyances.

From the Honourable Sir *Wm. Norris*, Knight, Recorder, Prince of Wales' Island, to the Honourable *S. G. Bonham*, Esq., Governor, &c. &c.

My dear Mr. Bonham,

Legis. Cons. 30 Dec. 1842. No. 17.

Although the Supreme Government (perhaps from a feeling of delicacy in a matter so nearly concerning myself) has neither transmitted me a copy, nor requested my opinion upon the Report of the Law Commission on the judicial establishment of the Straits; and although, from the terms of the communication made to you upon the subject, the requisition would seem to be limited to yourself and the other officers of the local executive Government; yet as you appear to think that the omission of any express or implied reference to myself for the same purpose was unintentional, and that the Supreme Government would be disappointed were I entirely to withhold my sentiments regarding the proposed changes; I proceed very briefly to recapitulate the substance of what I have already expressed in personal communication with yourself on the most material parts of the Report.

I concur most fully in the opinion with the Law Commission:

First, That the law of England, civil and criminal, with the modifications suggested in the 5th and 6th paragraphs of the Report, should continue to be the *lex loci* of the Straits; and that provision should be made for a bankrupt law, vice-admiralty jurisdiction, and jurisdiction over officers and soldiers in actions of debt and personal actions under 400 rupees.

Secondly, That "the continuance of a professional judge as the principal member of the judicial establishment for these settlements, is necessary for the satisfactory administration of the law applicable to civil cases, and advisable also with respect to the administration of the criminal law."

Thirdly, That the English language should continue as hitherto to be the language of record in all the courts; that parties addressing the court should, as hitherto in all the courts, be admitted to do so in their own language, but that legal practitioners in the professional judge's court should be required to address the court in English. I may remark here, as the Law Commission does not seem to be aware of the fact, that natives have never yet been admitted to practise as general law agents in the recorder's court; and that the instances have been very rare in which a native has been allowed to appear even as a special or occasional agent, and then only, I believe, on the ground of his principal's absence from the settlement, or absolute inability to appear. The Law Commission contemplates the extension, "at a future period," of a similar rule with regard to such agents as may practise in the subordinate courts. For my part, I see no good reason for postponing the adoption of the rule simultaneously in all the courts.

Fourthly, That with regard to criminal procedure, "the mode of trial now followed in the recorder's court, and generally in the English criminal courts, ought," as recommended in the 54th paragraph of the Report, "to be the model of the new court;" and, as recommended in the 53d paragraph, "that the civil procedure should generally be that of the proposed subordinate court at Calcutta;" that is, if I am not mistaken in supposing, from the tenor of the 54th paragraph, that the intended procedure in this last-mentioned court is analogous to that "which was described by the late Sir Benjamin Malkin as adopted by him under the charter established for Her Majesty's Court in the Straits." And here I may observe, that the practice so correctly described by Sir B. Malkin in the extract from his letter quoted by the Law Commission, has been substantially followed by myself and, I believe, by his immediate successor, Sir Edward Gambier. I may remark also, with reference to Mr. Commissioner Young's observations on the subject (quoted in the Appendix to the Report now under consideration, (C.) p. 24), that this gentleman was certainly misinformed; I cannot by any means acquiesce in his opinion, that "the principal reform necessary is the simplification of the pleadings and procedure," nor do I believe that Sir B. Malkin, able and indefatigable as he was, did a great deal towards the accomplishment of this end; and I am sure that it cannot be said with greater truth at present than during his time, that "now the business of preparing the pleadings has fallen into the hands of law agents, and that they have become long and technical." Sir R. Rice, I believe, is justly entitled to the credit of having done much towards "the simplification of the pleadings and the

the procedure;" but it should be remembered that he had only Penang to attend to; and I am not sure but that he may, with the best intentions, have gone a little too far in his neglect of technicalities; for Sir John Claridge, if I am not mistaken, conceived it necessary to introduce greater strictness and attention to forms; and this, with other causes of disagreement, drove Mr. Fullarton, who abhorred professional trammels, if not to the contrary extreme, at least further in the opposite direction than a man of his strong sense would perhaps on more lengthened experience have considered it prudent for any judge to go, who professed to administer justice according to the English law. The result of these shiftings and conflicts, with the recal of Sir J. Claridge, and the absence of a professional judge from the Straits for some years, seems to have been a degree of laxity in the pleadings and procedure which must have appeared very strange to a sound lawyer like Sir B. Malkin, fresh from England; accordingly in the paragraph immediately following the one above quoted by the Law Commission, he says (with reference to an observation that the proceedings were too complicated), "I occasionally anticipated that my successor might complain of me as not having done enough towards confining the practitioners in the court to a technical and regular conduct of business; I certainly did not expect to hear that the proceedings were too artificial." Strange that he should both have been censured for over technicality, and praised for his love of simplicity! I believe the truth to be, that without doing much either way, he followed about the same course as would have been followed by any lawyer of judgment and discretion under similar circumstances, that is to say, he held the reigns with a closer hand, and checked irregularities with greater promptitude and decision than his unprofessional predecessor had done, yet without any material alteration of system. To the system thus left by Sir B. Malkin (for Sir E. Gambier remained too short a time to effect, even had he wished for, any decided change), I have, from the first, substantially adhered, and have quite as much reason as he had to say, that "I certainly did not expect to hear that the proceedings were too artificial." The existing system is, beyond a doubt, substantially the same as obtained during Sir B. Malkin's time; and with equal truth may it be said now, as then (again to quote his own words in the same paragraph), that if, "in cases where professional agents were employed, there has of course been more of expense, more of complication occasionally, and somewhat more of delay; yet even in these cases the general outline of the proceeding has been the same as in contested cases of the nature already explained;" (viz. in the 11th paragraph already quoted). On the whole, then, I believe that the present system, with respect to pleading and procedure, is about as simple as prudence and the nature of the laws to be administered will admit, and that in this respect consequently scarcely any, and certainly not "the principal reform," is necessary.

Fifthly. I quite concur in opinion with the Law Commission, that the courts of quarter and petty sessions, and the institution of the grand jury, should be abolished; the latter measure, in particular, I have always advocated.

Sixthly. "That the number of members required to form a coroner's jury should be everywhere reduced." I would propose to the number of six; and that in the trial of those criminal cases in which a jury is still recommended to be retained, the verdict should not be required to be unanimous; but as there would be no difficulty in obtaining at any time the attendance of 12 sufficient jurors, I would not recommend that the number should be reduced, and I would suggest that a verdict from two-thirds of the number at least should be required instead of a simple majority. Nor would I limit the intervention of juries as recommended to the trial of capital cases, but retain them also in all cases which are proposed to be reserved for trial before the professional judge; that is to say, "all cases in which the crime charged is punishable by death, or imprisonment for life, or for 14 years, or by transportation for any term;" leaving it, nevertheless, to the discretion of the professional judge to dispense with the jury, if he thought fit, in all cases of larceny and burglary, without violence.

Thus far, and with the above qualifications, I concur generally in the recommendations of the Law Commission.

With regard to the system of judicature proposed to be substituted for that established by the charter, I consider it well adapted as a whole to secure the administration of substantial justice; but with due deference to the learned and able framers of the plan, I conceive that it might, in some respects which I will mention, be altered with advantage; and with regard to the financial part of the scheme, I can scarcely be expected, especially as to the principal item, the salary of

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of the professional judge, to offer an opinion, unless in the most general terms. I will only observe, therefore, on this point, that the salaries allowed to the judges in Ceylon, do not, in my opinion, afford a fair criterion of what ought to be allowed to similar functionaries in the Straits, the average cost of living in the latter dependencies being, as far as my experience has gone, nearly double that in Ceylon. Of the comparative expenses of living in the other dependencies which are referred to, New South Wales, Van Diemen's Land, the Cape of Good Hope, and Sierra Leone, I know nothing.

Not having yet been fortunate enough to see the Law Commissioners' plan for a subordinate court at Calcutta, I am not sure that I quite understand the plan of that for the Straits, which is proposed to be formed on the same model, as nearly as circumstances will admit. But, if I apprehend rightly, the Straits' court is to consist of three judges, exercising separate jurisdictions over different classes of cases, and consequently sitting at different times, so that trials of the lower and of the higher classes could not be going on at one and the same time unless the judges sat in different rooms, and were provided with different sets of interpreters and other officers. But if, on the one hand, such simultaneous operation be, as it certainly would, an advantage which ought, if possible, to be secured; and if, on the other, an habitually intermittent suspension of the functions of two judges out of the three, would be an evil, if possible, to be avoided; then the simpler, and, as it seems to me, every way better mode of ensuring the benefit and preventing the mischief referred to would be, the establishment, or rather the continuance of at least two distinct courts, instead of only one court, composed of three judges of graduated powers, whose separate and simultaneous operations in close proximity would probably,—unless all were men of extraordinary temper and discretion, a coincidence not to be permanently looked for on any bench or in any society,—be carried on, if not with mutual jealousy and suspicion, at best with a kind of discordant concord, little creditable to the seat of justice. I humbly think, therefore, that a less decided departure from the existing system would be at once more dignified, easy, and agreeable to the judicial functionaries themselves, less opposed to the feelings and prejudices of the inhabitants, and better calculated for permanent efficiency than the new system proposed. I would accordingly recommend that there be, as at present, two courts for the administration of justice in civil cases; the higher consisting of the professional judge and the resident councillor at each station, to possess substantially the same jurisdiction as that exercised by the existing court, with the additions proposed; the lower under the assistant resident, to hear and decide all such cases as have hitherto usually been disposed of by the court of requests, but with some increase of jurisdiction—say to the extent of 100 dollars.

As regards the superior court, the greatest improvement on the present system, and that which would be at once the most efficient and the most acceptable to all classes, including, I believe, the executive government itself, would be a complete separation of the judicial and executive branches by the establishment of two separate superior courts, one for Singapore and Malacca, the other for Penang and Province Wellesley, each consisting of a single professional judge, the one being empowered to act occasionally for the other, in the cases of sudden death or absolute incapacity from illness, unavoidable absence or other cause. A special provision would indeed, on this plan, be still necessary for Malacca, where the civil and criminal business might, for the most part, be disposed of by the resident councillor and his assistant, reserving the more important cases for the periodical visits of the professional judge from Singapore, or even remitting such cases to Singapore direct. This I should imagine would be especially desirable to the inhabitants of Penang and Province Wellesley, by whom the loss of a resident professional judge, after 35 years' experience of the advantage of his presence, would, I believe, be very generally felt. But if this plan should still be thought too expensive, notwithstanding the material reductions proposed in the salaries of the professional judges, and of the registrar, and the saving which would be effected by striking off circuit and other expenses inseparable from an ambulatory court, the next best arrangement, I think, would be that just above recommended, viz., a court consisting of a professional judge and the three resident councillors; and, supposing this arrangement to be approved, I do not see any sufficient reason for curtailing the present powers of the lay judges to the extent proposed. If "all cases involving points of English law" were, as proposed in the 33d paragraph of the Report, to be reserved for the professional judge, it is certain that a very large

proportion

proportion indeed of all the cases tried at Penang and Malacca would have to be postponed until the periods of the circuits; for the terms of the reservation include all supposable cases of the kind, from the simplest to the most complex. I think, therefore, that, supposing Singapore to become the fixed residence of the professional judge, parties at Penang and Malacca might safely be left, as those at Singapore and Malacca have hitherto been, to their remedy by moving for a new trial before the professional judge; and even in cases in which the government is concerned, as also cases of 10,000 rupees and upwards, wherein the question to be determined may frequently be a simple matter of fact, and delay a hardship to one or both parties, it would be sufficient, I think, to provide, in addition to the remedy of a new trial, that the defendant might, if he thought fit, insist that the trial in the first instance should be reserved for the professional judge. In all other cases which might occur at Penang or Malacca, involving intricate questions of English or international law, I have very little doubt that one or other, if not both of the parties, or their agents, would generally apply for a postponement of the trial until the arrival of the professional judge, and that the lay judge would, for his own sake, very readily accede to the request, or even be himself the first, as he always might, to direct the necessary postponement, whether the parties wished it or not: and as this general adherence to the present system would be sufficient, in my opinion, to ensure the attainment of substantial justice to the parties, so, I think, it would be advantageous on the one hand that the chief executive authority next to the Governor at each station, should not be deprived of the consideration which he enjoys from his present position as the professional judge's colleague; whilst, on the other, it is desirable that the latter, especially a barrister fresh from England, and having necessarily much to learn respecting the habits, characters, dispositions and usages of the various classes of native inhabitants, should feel that he has a well-informed colleague, rather than a jealous subordinate functionary, with whom to consult on such occasions.

At Singapore, or wherever the fixed residence of the professional judge may be, experience sufficiently proves that the lay judge will scarcely ever be likely to thwart or interfere with the general business of the court. The unhappy disputes between Mr. Fullarton and Sir John Claridge furnish, it is true, an instance to the contrary; but the proposed withdrawal of the Governor's judicial functions for the future, is a sufficient guarantee, with the casting vote, which should still be reserved to the professional judge, against the recurrence of similar difficulties.

The alteration which I have thus ventured to propose in the Law Commissioners' plan necessarily implies a corresponding alteration in the proposed system of appeals from the decisions of the superior lay judges. I have no alteration to suggest with regard to the proposed right of appeal from the decision of the subordinate lay judges, or assistant residents, except that the decision of the professional judge on such appeals should, in my opinion, be final. I say this, however, in ignorance of the grounds for special appeal to the College of Justice in Calcutta, referred to in the 39th paragraph, not having seen the draft therein referred to, which might possibly work a change in my opinion.

With regard to appeals, as proposed, from the decision of the professional judge in original cases to the College of Justice in Calcutta, and thence to the Privy Council, I think there should be some limitation, and that of 10,000 rupees and upwards I would submit is not unreasonable.

To the provision in the 42d paragraph of the Report I see no particular objection, though, with the right of appeal in full force, I should suppose that the power referred to would not often require to be exercised.

With respect to criminal jurisdiction, the alteration I should propose in the Law Commissioners' plan would, in the main, correspond with that which I have ventured to suggest on the civil side, viz. that there be but two courts instead of three, the higher, constituted of the same members as the civil court, to be open continually for the disposal of all cases punishable by a sentence exceeding six months' ordinary imprisonment and a fine of 200 rupees; reserving, however, for the professional judge at Penang and Malacca, not merely capital cases, but all in which the crime charged shall be punishable by imprisonment for life, or 14 years, or by transportation for any term. In the jurisdiction proposed to be conferred on the assistant resident I have no alteration to suggest, and I concur that he should also be local magistrate and superintendent of police, and inquire into, commit, or bail in cases beyond his own jurisdiction.

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As to appeals, in criminal cases, from the decision of the assistant resident, I think that the assistants at Penang and Malacca should be at liberty (as are the district judges in Ceylon), to enforce their sentence if they saw fit, notwithstanding such appeals.

I would empower the resident councillors at Malacca and Penang to try, with the aid of assessors as proposed, all cases of petty larceny and burglary without violence, but such as they should see fit, for any reason to reserve for the professional judge; and I would not object to an appeal from such decisions when contrary to the opinion of one or more of the assessors. But I do not see any good reason for allowing appeals to the College of Justice in Calcutta from the decision of the professional judge (proposing, as I have done, that in all serious cases he should be assisted by a jury), otherwise than at his discretion, as provided in the existing charter; and for the same reason the provision in the latter part of the 49th paragraph of the Report appears to me unnecessary; though I would not object to the provision in the former part of that paragraph.

I regret that, from the shortness of the time allowed me, I have not been enabled to express my views so fully and clearly as I could have wished, but I believe that I have not left any material part of the Law Commissioners' Report unnoticed.

I am, &c.
(signed) *W. Norris.*

Penang,
12 September 1842.

Legis. Cons. 30 Dec. 1842. No. 18.

Mawry Mootoo v. *Ramaputtra.*—To recover $ 150.

	Sp. dollars.	*Sp. dollars.*
Plaintiff's Costs:		
Amount of Judgment	150 –	
— of Court Fees	21 –	
— of Sheriff's Costs	5 –	
* — of Plaintiff's Agent's Costs	59 –	
		235 –
Defendant's Costs:		
* Defendant's Agent's Costs	41 70	
Court Costs	7 50	
Sheriff's Costs	4 –	
		53 20
TOTAL $.		288 20

In the Cause of *Arnashalleno Pilley*, Plaintiff, v. *James Scott Clarke*, Defendant.—
To recover $.75.

	Sp. dollars.	*Sp. dollars.*
Judgment for Plaintiff (with costs) for		30 –
Plaintiff's Costs, as follows:		
Registrar's Fees	15 –	
Sealer's Fees	2 –	
Sheriff's Fees	5 –	
Agent's Costs	48 –	
		70 5
Defendant's Costs, as follows:		
Court Fees		2 –
TOTAL $.		102 5

In

No. 3.
Recorder's Court: Registration of Conveyances.

In the Cause of *James William Salmond*, Plaintiff, v. *Soley Palter*, Defendant.—To recover $.100.

Amount of Judgment - - - - $.100.

	Sp. dollars.	*Sp. dollars.*
Plaintiff's Costs, as follows:		
Court Costs (including ca. sa.)	12 50	
Sheriff's Costs	1 –	
Sealer's Fees	2 –	
Agent's Costs	48 85	
		64 35
Defendant's Costs, as follows:		
Court Costs	5 –	
Sheriff's Costs	3 –	
Sealer's Fee	– 75	
		8 75
TOTAL - - - $.		173 10

Reduced on taxation to $.69. 45. costs.—*See* Original bill.

(signed) *S. G. B.*

The COURT of JUDICATURE of *Prince of Wales' Island, Singapore,* and *Malacca.*

Ramasawmy, Plaintiff, v. *James William Salmond*, Defendant.

	Sp. dollars.
Attendance on Client in conference on this Cause	2 –
Instructions and warrant to sue	2 –
Drawing Petition, five folios	4 50
Engrossing the same, ditto	2 –
Copy of same for use, ditto	1 25
Attending Registrar to file Petition	– 50
Attending for Summons	– 50
Attending Coroner therewith	– 50
Attending Court on return of Summons, when Defendant took four days to plead	2 –
Attending Registrar's Office to search Plea	– 50
Copy of Plea, two folios	– 50
Paid for search	– 50
Attending Court when notice was given to parties that cause would remain over for hearing by the Recorder	2 –
Attending Client ~~hereon~~ *Agent and Client*	1 –
Attending Court on motion to set down Cause for hearing on Tuesday	2 –
Attending Client and friends in long consultation on his case, and minuting facts, one hour	2 –
Drawing notice of Cause being set down for trial	– 50
Serving the same on Defendant's Agent	1 –
Instructions to subpœna Witnesses—*disallowed*	1 –
Attending Registrar's Office to procure Subpœna	– 50
Attending Sheriff therewith	– 50
Attending Court when Cause was set down for trial, but hearing postponed	2 –
Attending Client ~~hereon~~ *Agent and Client*	1 –
Attending Court when Cause was heard, and Judgment pronounced for Plaintiff for 100 Spanish dollars, damages and costs	10 –
Attending Client hereon	1 –
Drawing Bill of Costs, three folios	3 –
Engrossing the same, ditto	1 20
Copies, two, for use of parties	1 50
Attending to tax Costs	– 50
Paid for taxing	1 –
$.	46 45
Registrar's Fees	16 –
Sealer's Fees	2 –
Sheriff's Fees	5 –
TOTAL	69 45

Taxed at Spanish dollars - - - $.69. 45.

By me,
(signed) *A. J. Kerr,*
Registrar.

Registrar's Office at Singapore,
3 February 1834.

Details of Court Establishment at present existing at *Prince of Wales' Island, Singapore*, and *Malacca*, alluded to in Paragraph 23 of Mr. *Bonham*'s Letter.

	PENANG.			SINGAPORE.			MALACCA.		
	Rs. a. p.	Rs. a. p.		Rs. a. p.	Rs. a. p.		Rs. a. p.	Rs. a. p.	
Recorder's salary	3,368 – –								
Ditto - Clerk	300 – –								
Ditto - Peons	82 7 4								
		3,750 7 4							
Registrar's salary	1,493 – –								
		1,493 – –							
First Clerk	522 8 –			522 8 –			522 8 –		
Second Clerk	313 8 –			209 – –			- - -		
Third Clerk	- - -			100 – –			- - -		
Head Interpreter (two)	200 – –			150 – –			100 – –		
Chinese ditto	60 – –			50 – –			50 – –		
Chuliah ditto	20 – –			30 – –			20 – –		
Crier	50 – –			30 – –			20 – –		
Shroff	20 – –			—			—		
Peons	30 – –			30 – –			20 – –		
		1,216 – –			1,121 8 –			732 8 –	
Deputy Sheriff	200 – –			200 – –			104 8 –		
Gaoler	60 – –			60 – –			62 11 2		
Bailiff	52 4 –			50 – –			52 4 –		
Assistant Bailiff	- - -			30 – –			- - -		
Turnkey	20 7 2			20 – –			20 14 5		
Peons	20 7 2			20 – –			20 14 5		
		353 2 4			380 – –			261 4 –	
Coroner	104 8 –			104 8 –			- - -		
Peon	10 7 2			10 7 2			10 – –		
		114 15 2			114 15 2			10 – –	
		6,927 8 10			1,616 7 2			1,003 12 –	
		1,616 7 2							
		1,003 12 –							
Present		9,547 12 –	expenses.						
Proposed		6,310 – –							
Savings		3,237 12 –	per month.						
		or							
		38,853 – –	per annum.						

Details of Court Establishment proposed by Mr. *Bonham*.

	PENANG.			SINGAPORE.			MALACCA.			REMARKS.
	Rs. a. p.	Rs. a. p.		Rs. a. p.	Rs. a. p.		Rs. a. p.	Rs. a. p.		
First Clerk	600 – –			600 – –			400 – –			
Second Clerk	200 – –			200 – –			—			
Third Clerk	- - -			100 – –			—			
Head Interpreter (two)	200 – –			200 – –			100 – –			
Chinese ditto	50 – –			50 – –			50 – –			
Chuliah ditto	20 – –			30 – –			20 – –			
Crier	- - -			30 – –			20 – –			This person to act as shroff.
Shroff	—			—			—			
Peons	30 – –			30 – –			20 – –			
		1,100 – –			1,240 – –			610 – –		
Deputy Sheriff	200 – –			200 – –			100 – –			
Gaoler	60 – –			60 – –			50 – –			
Bailiff	50 – –			50 – –			30 – –			
Assistant Bailiff	- - -			30 – –			—			
Turnkey	20 – –			20 – –			20 – –			
Peons	20 – –			20 – –			20 – –			
		350 – –			380 – –			220 – –		
Coroner	100 – –			100 – –			—			
Peon	10 – –			10 – –			10 – –			
		110 – –			110 – –			10 – –		
		1,560 – –			1,730 – –			840 – –		
		1,730 – –								
		840 – –								
		4,130 – –								
		2,000 – –	Recorder.							
		150 – –	Clerk for ditto.							
		30 – –	Peons.							
		6,310 – –								

(signed) *S. G. Bonham*, Governor.

—	PRESENT ANNUAL ALLOWANCE TO ESTABLISHMENT.	PROPOSED ANNUAL ALLOWANCE BY LAW COMMISSIONERS.	PROPOSED ANNUAL ALLOWANCE BY MR. BONHAM.
	Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*
Recorder's salary	40,416 – –	17,500 – –	24,000 – –
Travelling expenses	—	2,500 – –	—
Clerk	3,600 – –	—	1,800 – –
Peons	989 8 –	—	360 – –
	45,005 8 –	20,000 – –	26,160 – –
		Reduction (*) *Rs. a. p.* 25,005 8 –	Reduction (†) *Rs. a. p.* 18,845 8 –

	Singapore.	Penang.	Malacca.	Singapore.	Penang.	Malacca.	Singapore.	Penang.	Malacca.
	Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*
Subordinate establishment	19,397 6 –	38,125 2 –	12,045 – –	18,600 – –	13,620 – –	11,220 – –	20,760 – –	18,720 – –	10,080 – –
		19,397 6 –			18,600 – –			20,760 – –	
		12,045 – –			11,220 – –			10,080 – –	
		69,567 8 –		Recorder's establishment	43,440 – –			49,560 – –	
	Recorder's establishment	45,005 8 –		Proposed by Law Commissioners	20,000 – –		Recorder's establishment	26,160 – –	
	Present cost of court	114,573 – –			63,440 – –	Reduction, (*) 26,127 8 –	Proposed by Mr. Bonham	75,720 – –	Reduction, (†) 20,007 8 –

In Mr. Bonham's statement are not included any portions of the salaries of the resident councillors or their assistants, as the executive offices must be upheld, whether they be judges or not, and be paid in a respectable manner. In the printed statement the Law Commissioners propose to debit the judicial department as follows, on account of the resident councillors and their assistants:—

	Rs.	*Rs.*
At Singapore.—Resident Councillor	9,000	
Assistant	4,800	
		13,800
At Penang.—Resident Councillor	9,000	
Assistant	9,600	
		18,600
At Malacca.—Resident Councillor	6,000	
Assistant	4,800	
		10,800
		43,200

		Rs. a. p.		*Rs. a. p.*
Recorder's salary and establishment	(*)	25,005 8 –	(†)	18,845 8 –
Subordinate ditto	(*)	26,127 8 –	(†)	20,007 8 –
Total Reduction in the Judicial Department		51,133 – –		38,853 – –

	Rs. a. p.
Recorder's salary and establishment	20,000 – –
Subordinate ditto	43,440 – –
Lay judge	43,200 – –
	106,640 – –

(signed) *S. G. Bonham*, Governor.

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Local Court of Judicature.

Before the Honourable *S. G. Bonham*, Esq. Governor, &c.

Robert Jack v. *James Pasley.*

Judgment.

Legis. Cons. 30 Dec. 1842. No. 20.

This is an action to recover from the defendant, who is commander of the ship Molson, damages for the non-delivery of certain casks of wine, according to the tenor of a bill of lading. The wine was shipped in London on board the Molson in August last, by Mr. Peter Tulloch; and a bill of lading, containing an acknowledgment of the freight having been paid in London, was signed by the defendant, making the wine deliverable in Singapore to Mr. Tulloch or his assigns. The bill of lading bears an indorsement by the shipper, making the wine deliverable to the plaintiff. The ship has arrived safe at Singapore, and the plaintiff, as indorsee of the bill of lading, has presented it, and demanded the wine, which the defendant has refused to deliver, alleging that, owing to some misunderstanding between the shipowner and the shipper, the freight of the wine, notwithstanding the acknowledgment in the bill of lading has, in point of fact, never been paid. On the merits of this case I do not, for reasons which will presently appear, consider it necessary to enlarge. At the trial an objection was taken by Mr. Napier, for the defendant, to the legal right of the plaintiff to maintain this action, upon the ground of his being merely the consignee or indorsee of the bill of lading, without valuable consideration. Letters were produced in which the plaintiff alludes to himself as being simply the holder of the bill of lading, and some further evidence was adduced to the same effect; and, as the plaintiff failed to give any proof that he was the owner of the wine, it was contended by Mr. Napier that the plaintiff was not the party whom the law recognizes as entitled to maintain an action, in the present case, in his own name. It has, indeed, been a much disputed point, whether a person armed only with a naked indorsement on the bill of lading, without showing any ownership in the goods, is, upon the non-delivery of them, entitled to maintain an action in his own name; and I certainly wish that it had not been left to this court, in the absence of a professional judge, to give an opinion on a question which appears to have been considered one of so much doubt in England. Unfortunately we have not, in this settlement, the means of referring to the reports of the several cases in which the question has become matter of discussion in the courts in England; all that we can do, therefore, is to avail ourselves of such light as the few law treatises which are within our reach are calculated to throw upon the subject. The passage in those books principally referred to and relied on by Mr. Napier, in support of the defendant's side of the question, is to be found in Mr. Lawes's Treatise on Charter Parties, published in 1813, and is in the following words:

"It seems that the mere indorsement of a bill of lading to an agent, to enable him to receive the goods on account of his principal without any consideration, will not enable such agent to maintain an action of trover, in his own name, for the value of the goods; for no decision of a court of law, upon the subject of bills of lading, has gone further than to say, that the assignment of a bill of lading by the consignees, for a valuable consideration, and without notice to the party taking it of a better title, passes the property in the goods consigned. The analogy between bills of lading and bills of exchange has not been carried further than it was in the case of Leckbarrow and Mason, viz. that an indorsement of a bill of lading to the agent was no more than the shipper's authority to the captain to deliver the goods to such agent. The object in making it was only to enable the agent to take possession of them on account of the shipper, as a matter of precaution, in case of insolvency. In a subsequent case a similar question occurred before Lord Ellenborough at Nisi Prius, in an action of assumpsit brought by the plaintiff, as indorsee of a bill of lading, for a quantity of butter shipped at Sligo by one Everard, on board a ship whereof the defendant was master, to be delivered to the shipper's order or assigns. It appeared that the plaintiff was merely Everard's agent, employed to stop the goods *in transitu*, on account of the insolvency of Baggott & Co., the consignees. It was contended, by the defendant's counsel, that the action could not be maintained by the plaintiff, who, being an indorsee without value, had no property in the goods; and the case of Coxe and Harden

was

was cited as an authority. The counsel for the plaintiff contended that his client, as indorsee of the bill of lading, must be taken to have the legal property of the goods; and they distinguished this case from Coxe and Harden, on the ground that that was an action of trover, wherein the property came into question; but the plaintiff in the present case had declared for a breach of the defendant's contract, according to which he was to deliver the goods to the assignee of the shipper. But Lord Ellenborough was decidedly of opinion that the plaintiff, as indorsee of the bill of lading without value, had not the legal property in the goods. He observed, No case has gone so far as to decide that a bill of lading is transferable, like a bill of exchange, and that the mere signature of the person entitled to the delivery of the goods *primâ facie* passes the property in them to the indorsee. Much confusion has arisen from similitudinary reasoning upon this subject. There must be value upon the indorsement of a bill of lading, or no property in the goods is thereby transferred. The right to stop the goods *in transitu* is a personal right of the seller, and cannot be thus assigned to another. The action, if maintainable at all, should have been brought, not in the name of the agent, but of the consignor himself. (*Vide* Waring *v.* Coxe, 1 Campbell, p. 370.) His Lordship said it made no difference whether the form of action was trover or assumpsit. If no property passed to the indorsee, he could have no right to complain of the non-delivery or of the conversion of the goods as an injury to himself. The plaintiff was accordingly nonsuited."

I have thought it right to read this passage to you at full length, and it clearly appears from it that Lord Ellenborough, one of the ablest judges that has ever sat in the Court of King's Bench, was decidedly of opinion, that where no property passes to the indorsee of a bill of lading, he cannot sue in his own name for the non-delivery of the goods; and although the law, as thus strongly declared by Lord Ellenborough, appears by a subsequent decision to have been modified in favour of agents appointed to stop goods *in transitu*, yet the general law upon this subject remains, so far as I am aware, unaltered. At the trial the plaintiff made no reference to books; but he has since submitted to me, through the clerk of the court, two passages as favourable to his side of the question; one of them in Paley's Law of Principal and Agent, and the other in Woolrych's Commercial Law. These passages I shall, in justice to the plaintiff, quote at large. The first is from an edition of Paley's Principal and Agent, published in 1819, and is in the following words:

"The possession which a factor or other agent has of his principal's property, entitles him to bring actions of trespass or trover for injuries affecting the possession; and it has been said that a factor to whom goods have been consigned, and who has never received them, may maintain trover. A doubt has been expressed, whether a mere agent to whom a bill of lading is indorsed, without consideration by the consignor, to enable him to receive the goods, can maintain trover before the receipt of them. But it seems at present settled that he may, provided the consignment be not countermanded."

Now, if this passage had not been in any manner qualified, it would have been greatly in favour of the plaintiff's side of the present question. "It seems," says Mr. Paley, "to be settled, that a consignee, without valuable consideration, may maintain trover for the goods before he has received them." But then, appended to this text, there is a note referring the reader to the case of Waring *v.* Coxe, "from which," says Mr. Paley, "it seems to be the contrary." Now the case of Waring *v.* Coxe, here mentioned, is one of those cases which are referred to in Lawes on Charter Parties, as most strongly supporting the law as laid down by Lord Ellenborough, in the passage already quoted from Mr. Lawes's work. The passage, therefore, from Paley, is little to the purpose. But, as I have already said, there is also a passage in Woolrych's Commercial Law to which my attention has been directed by the plaintiff. Mr. Woolrych's work was published in 1829, and the passage referred to by the plaintiff is in the following words:

"It is observable, that unless a party have a property in the goods in question, he may not, except as agent to stop *in transitu*, maintain an action in his own name. So that a mere indorsement to an agent, without valuable consideration, for the purpose of enabling him to stop *in transitu*, the *transitus*, in fact, being at an end, gave such agent no title to sue the master in trover; and the case is the same although the plaintiff be named in the bill of lading, and he effect an insurance on the cargo which he seeks to recover. But these are distinguishable from cases

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where the goods are *in transitu* when the agent makes his demand, for then he has a special property, and may have a right of action accordingly."

This is the passage from Mr. Woolrych, who, in support of the law contained in the last sentence of the quotation, refers the reader to the case of Morison *v.* Gray, in Bingham's Reports. Now, in what Mr. Woolrych says, I must confess I see nothing that can support the plaintiff's side of the question. All that appears in it of a tendency favourable to the plaintiff, is, that the law as laid down by Lord Ellenborough, has since been relaxed in favour of agents employed to stop goods *in transitu*. But as the plaintiff in this action does not act as an agent for that purpose, I must consider his case as falling within the general rule, which is, in the words of Mr. Selwyn in his Law of Nisi Prius, that "the action against a carrier for non-delivery of goods must be brought by the person in whom the legal right of property in the goods in question is vested at the time, for he is the person who has sustained the loss, if any; and whoever has sustained the loss is the proper party to call for compensation from the person by whom he has been injured." This being the general rule in relation to carriers both by land and by water, it is incumbent on me to say that the plaintiff must be non-suited.

In coming to this conclusion, I may add, that I have done so contrary to the original leaning of my own opinion, and that if I could have considered the plaintiff as the party entitled to sue, I should, on the merits of the case as they are in evidence before me, have decided in his favour.

(No. 124 of 1842.)

Legis. Cons. 30 Dec. 1842. No. 21.

From the Governor of Prince of Wales' Island, Singapore and Malacca, to *F. J. Halliday*, Esq. Secretary to the Government of India.

Sir,

Judicial Dept.

In continuation of my letter of the 28th ultimo, touching the judicial establishment in these settlements, I have now the honour to forward a further communication from the learned recorder of the court, on the same subject.

The principal object of this second letter appears to be an acquiescence on the part of the recorder that the lay judges should have power to try all offences, with the aid of assessors, enumerated in section 4 of the Draft Act appended to the Law Commissioners' Report; but that the punishment to be awarded should not exceed a fine of 1,000 rupees, or imprisonment at hard labour for a period of two years; such convictions to be subject to an appeal to the professional judge, when it be challenged as wrong in point of law, or when it is contrary to the opinion of one or more of the assessors; but that no such appeal is to be permitted from the professional judge to the College of Justice in Calcutta under similar circumstances. To this proposition I must beg leave strongly to dissent; for, as already observed, I cannot admit, on a point of fact, that the learned judge's opinion is entitled to more weight than that of his lay colleague, and certainly not so much when that opinion is supported by the voice of the three assessors out of four.

If the learned recorder intends that the cases he tries should not be liable to be questioned on points of law, I concur with him; but I see no reasons why, when his assessors dissent from him on facts, his proceedings should not be liable to be inquired into by the College of Justice at Calcutta, in the same manner that he himself proposes to inquire into cases that have been settled by the lay judge. On points of law the prisoner should be permitted to petition the court generally, when the lay judge having made such remarks on the petition as may appear necessary and proper, the conviction can be quashed if sufficient grounds be shown that it is illegal; but should the barrister judge be absent, then it should be at the discretion of the lay judge to carry into effect the sentence, notwithstanding.

If, however, the system of assessors is given up, and that of juries continues, there can and will be no necessity for appeals on facts. If it be considered that appeals should be allowed because it is proposed that the jury need not be unanimous in the verdict, and their number are to be less than usual, then I would say, in preference to these multiplied appeals, let the jury system remain as at present, and the conviction be by the voice of the whole panel.

If

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If the assistant resident is not to be assisted by assessors or a jury, I would allow an appeal to the lay or professional judge, either of whom might reject or receive the appeal as he sees fit; but should a new trial be granted, it should not be held simply before either of the superior judges sitting alone, but before either of them with the assistance of a jury or assessors, according to the system that may be eventually adopted. In civil matters there would be, of course, an appeal to the court of judicature as at present by writ of certiorari.

From the learned Commissioner's letter, I infer that it is intended to permit the lay judges to incarcerate culprits for any period under 14 years. I presume, therefore, it is intended to abolish the punishment of transportation, except it be for life; otherwise I see no reason why the power of transporting a criminal for seven years should be withheld from a court which it is intended to entrust with the power of imprisonment and hard labour for 10 years.

I think if the lay judges are tolerably efficient officers, (and whether they be so or not will of course materially depend on the emoluments attached to the office,) two circuits during the year are as much as the barrister-judge should be called on to perform; in the event of emergency he could, of course, make an extra circuit.

I have not dissented from the introduction of the bankrupt laws into these settlements, for I really do not at present understand how they are likely to work; but at first view they would seem intended to effect humane purposes. When, however, the draft Act is published the inhabitants of the Straits settlements will be enabled to judge of the effect they are likely to have on their interests.

The last paragraph of the learned recorder's letter is to me particularly satisfactory, as it shows that, when a good understanding exists between the parties, mere difference of opinion on official duties need not estrange them. This feeling has been engendered on the part of the lay officers towards their professional and learned colleague, no doubt from that honourable gentleman's kind courtesy and considerate attention towards them; but I have doubts if the same feelings of cordiality and confidence would or could have existed if the parties had stood to each other in the position the Law Commissioners propose to place them.

I have, &c.

(signed) *S. G. Bonham*, Governor.

Singapore, 4 October 1842.

From the Honourable the Recorder of Penang to the Honourable *S. G. Bonham*, Esq. Governor, &c. &c. &c.

Legis. Cons. 30 Dec. 1842. No. 22. Enclosure.

My dear Mr. Bonham,

On re-perusing the draft of my letter to you of yesterday, (which, as you are aware, was, in order to save time, written with unavoidable haste, within a few days of my return from circuit, and on the very eve of your own departure from hence to Singapore,) I think it necessary to add a few observations in further explanation of my views with regard to the respective jurisdictions of the professional and superior lay judges, and on the subject of the proposed system of appeals; as also with reference to a few other points in the Law Commissioners' Report, to which I have not yet adverted.

Supposing Singapore to become the professional judge's place of residence, I have recommended, that not merely capital cases, but all serious criminal cases occurring at Penang and Malacca, (and of course at Singapore also, where in fact the lay judge, as hitherto in Penang, will have neither cause nor inclination, except during the circuits or the illness of his colleague, or in particular cases, to take more than a nominal part in the business of the court,) should be reserved for trial before the professional judge and a jury; giving him, nevertheless, a discretionary power to dispense with a jury if he should see fit, in all cases of simple larceny and burglary without violence. I have thus, you will perceive, in part followed the proposal of the Law Commission in their 45th paragraph, that the jurisdiction of the professional judge "should embrace all cases in which the crime charged is punishable by death, or imprisonment for life or 14 years, or by transportation for any term." I have added, however, the material improvement, as I consider it—the intervention of a jury, not in capital cases only (as proposed by the Law Commission), but in all cases of the above description, with the discre-

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tionary exception above mentioned. This extension of the Commissioners' proposal, or rather this adherence to the present system, I have recommended, first, because, in my opinion, men charged with crimes subjecting them to the mildest even of the above punishments ought not, any more than those liable to capital punishment, to be deprived of the great benefit of a trial by jury, without a very urgent necessity, which necessity does not exist, considering the proposed three annual circuits, and the ease with which a sufficient panel of jurors will always be procurable at each of the three stations, especially if the grand and petty jury lists be amalgamated as proposed; secondly, because even should the delay of trial and the difficulty of procuring jurors prove to be much greater than can be anticipated, the inconvenience and delay would be infinitely counterbalanced by the benefits of such a mode of trial, and the avoidance of the mischiefs inseparable, as it appears to me, from the proposed system of trials before assessors, subject to appeals to Calcutta. The proposed deprivation, moreover, of trial by jury, except in capital cases, it will be observed, is unrestricted as to persons, and would therefore include British subjects, who would not be easily convinced of the justice or necessity of withholding from them a privilege which they have always been accustomed to regard as their birthright. There are, however, cases coming within the above category, in which, it seems to me, that the intervention of a jury may in general be very well dispensed with, especially when, as at Penang and Malacca, a delay of some months must generally intervene between the periods of commitment and of trial before the professional judge; I mean the ordinary cases of simple larceny and burglary without violence, which on an average constitute three-fourths of the number of cases in the Straits calendars, and which, though legally punishable with transportation, are in fact rarely, but in cases of notorious offenders, visited with a heavier penalty than from six months to two years' imprisonment at hard labour. With respect to such cases accordingly, I have proposed two modes of proceeding; the first is, that all cases of this description (except such as the local judge should see fit to reserve with the graver cases for his professional colleague) should be triable by the superior lay judges at Penang and Malacca respectively, with the aid of assessors, and subject to an appeal to the professional judge, as proposed by the Law Commission; but that his decision should be final, and not subject, as proposed, to a second appeal to the College of Justice at Calcutta. The other recommendation which I have made with regard to these minor cases is, that whether they come before the professional judge in due course at Singapore or as reserved cases at Penang or Malacca, he should, nevertheless, have a discretionary power to dispense with a jury, and try them, with the aid of assessors, in the same way as the lay judges would proceed; but that his decision should in like manner be final, and not, as proposed by the Law Commission, subject to an appeal to Calcutta, "when a conviction is challenged as wrong in point of law, or when it is contrary to the opinion of one or more of the assessors." But in all such cases of challenge or dissent, I would propose, as a far less dilatory and objectionable, yet I think sufficient security against hasty or intemperate decisions, that judgment be arrested for three or more days (as might be convenient) in order that the judge might review the evidence and consider whatever might be urged to prove the conviction erroneous in point of law or fact.

In Calcutta, where immediate resort may be had to the superior tribunal, the right of appeal to it in such cases may be wise and proper, especially as it is not intended, I presume, as indispensable that the judge of the subordinate criminal court there should be a lawyer. But as the effect of such a provision in the Straits would probably be a frivolous appeal in every case (and those not a few) in which either the prisoner himself or a casual friend or acquaintance among the assessors might think another chance of acquittal, or at least a postponement for some months of a sentence of hard labour, desirable, I think the inconveniences and evils to be expected from an abuse of the privilege would far outweigh the advantage to be anticipated from the occasional correction of a wrong decision in a case wherein the sentence would not, at the utmost, probably have exceeded two years' imprisonment at hard labour, and would very likely have been but half as much, or less; for in all serious cases the necessity for a right of appeal, otherwise than at the discretion of the professional judge, would, as admitted by the Law Commission in their 48th paragraph, be obviated by the trial by jury such as I have recommended.

The trial of all cases of simple larceny and burglary without violence as they arose,

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arose, at Penang and Malacca, by the lay judges and assessors, and the disposal of all cases of petty assault and trifling misdemeanor by the assistant residents, would, in the main, sufficiently ensure one of the principal desiderata of the present system, the speedy decision of the lighter and most numerous cases of crime. But as this benefit might be extended to other cases than those which I have mentioned, I would, on consideration, further recommend that the local judges of the Superior Court at Penang and Malacca be empowered to try, with assessors, all the offences enumerated in the fourth section of the Draft Act appended to the Law Commissioners' Report, with the provisions in the 5th and 6th sections of that Act, and an additional proviso, that the punishment should in no case exceed a fine of 1,000 rupees, or imprisonment at hard labour for two years.

Another advantage resulting from this system of speedy trial would be, the less apparent necessity for such frequent circuits by the professional judge; for independently of the public inconvenience, if not injustice, arising from the broken and disjointed practice, the frequent interruptions, the occasional haste, and unavoidable delays necessarily incidental to the business of an ambulatory court, where there is but one professional judge, I cannot but think that three annual circuits (which though light and pleasant, perhaps, to a young, single, and active man, might be very much the reverse to a family man of domestic habits, advanced life, or infirm health,) are more than should be imposed as a matter of express command on any judge in this climate, unless there be an adequate necessity in the case, which under the system proposed, I do not, after an experience of six years in the Straits, think will be found to exist. I would therefore, instead of making three circuits imperative, leave a discretion in the judge; and propose, as at present, two circuits, or more if necessary.

With regard to the jurisdiction of the assistant residents, which the Law Commissioners propose should embrace all cases in which the crime or offence may be of a nature to warrant a sentence not exceeding six months' ordinary imprisonment, and a fine of 200 rupees, subject to the defendant's right of appeal in all cases to the superior lay judge, and from him (should his decision be challenged as wrong in point of law, or be contrary to the opinion of one or more of the assessors) to the professional judge, I have expressed my general concurrence in the proposal; but I have recommended that the assistants at Penang and Malacca should be at liberty (as are the district judges in Ceylon, under the 39th clause of the Ceylon Charter) to carry their sentences into execution, should they see fit, notwithstanding such appeals. I recommended this for the same reason which doubtless led the framers of that charter to introduce the clause in question, viz. to prevent the ends of public justice from being defeated in many cases by needless delay in the execution of a just sentence. On reflection, however, as the proposed system of appeals is not exactly parallel to that in Ceylon, I would wish in some degree to qualify my recommendation in this respect. In Ceylon a frivolous appeal from a conviction had in a distant district court to the Supreme Court in Colombo might, but for the above proviso, delay the execution of a just sentence for some weeks; and such would be the case in these settlements were the appeal proposed to be direct from Penang to the professional judge at Singapore. The intermediate appeal, however, to the local superior lay judge would, in general, operate as a sufficient security against frivolous appeals for mere delay, if, as I would now recommend, a secondary appeal to the professional judge against a conviction affirmed by the superior lay judge should not operate as a stay of execution unless one or other of the two local judges should see fit to stay the execution pending such appeal.

In my former letter I omitted to notice the recommendation of the Law Commission in the 56th paragraph of their Report, with regard to periodical statements. I concur in thinking such returns very desirable, provided the establishment of clerks shall be found sufficient for this and the additional work which is likely to be created by the increase of the court business in appeals and bankrupt cases. But this is a question rather belonging to the financial part of the scheme, on which I do not offer any opinion.

I am not sure that I understand the arrangement proposed by the Law Commission regarding the fourth of those "minor alterations," which they notice in page 17 of their Report, as "having been suggested for improving the administration of justice in the Straits," and will therefore, to prevent misapprehension, content myself with observing that I consider the alterations in question for

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effecting a practical separation of the three settlements for the purposes of process of the local courts, and for the exemption of process from needless formalities, as highly desirable.

With regard to a pauper establishment, a subject which the Law Commission "recommend to be left open for further inquiry," I do not conceive that such an establishment is much required, although it would be a relief to the court.

There may possibly be some other points in the Report on which I have not expressed any opinion, and some remarks and recommendations of my own may perhaps stand in need of qualification or further explanation; should either be desired, I shall be happy to meet your wishes.

With reference, by the way, to my remark on the declaration of the Law Commissioners, in their 65th paragraph, "that it does not enter into their scheme to employ the governor in any judicial function," I gladly avail myself of the opportunity of adding a few words, to prevent the possibility of misconception in other quarters, having no apprehension that my meaning could be mistaken by yourself. Whilst, then, I consider this recognition of a sound principle by the Law Commissioners to be matter for joint congratulation to the chief executive and judicial authorities, as the best guarantee for their mutual independence, harmony, and good understanding, I have much pleasure in stating, after an experience of six years, that the friendly feeling which has always subsisted between you, and indeed all my unprofessional colleagues, and myself, has left me individually but little cause for desiring a change of system.

Of course you and they are at liberty to comment with the utmost freedom on my suggestions, and indeed it is desirable, for the information of the supreme government, that you should do so; meanwhile,

I remain, &c.

Penang, 13 September 1842. (signed) *W. Norris.*

P. S.—I had almost omitted to mention a material error in the wording of my first letter. The paragraph commencing, "With regard to appeals, as proposed, from the decisions of the professional judge in original cases to the College of Justice in Calcutta, and thence to the Privy Council," &c., should run as follows, viz.: "With regard to appeals, as proposed (in paragraph 38 of the Report), from the decisions of the professional judge in original cases to the College of Justice in Calcutta, I think there should be some limitation; and I submit, that of cases involving 5,000 rupees and upwards would not be unreasonable, as that of 10,000 rupees and upwards is the limitation proposed (in paragraph 43) with respect to appeals from the College of Justice to the Privy Council."

Legis. Cons. 30 Dec. 1842. No. 23. Straits Judicature.

MINUTE by the Honourable *A. Amos,* dated 9th November 1842.

I HAVE not detained these papers long enough to form a judgment on the various points discussed in them, as I wished them to pass in circulation before the papers on the subject, upon which orders have been recently given, were sent up to Simlah; or, if they were sent up, that his Lordship should be apprised, without delay, that important communications from the Straits upon the same subject were about to be sent to him.

From a cursory perusal of the papers, I collect that some of the most material reforms meet the concurrence of the Straits authorities, including the economical saving with regard to the registrar. Under these circumstances I should be disposed to concede many things to the local experience of the recorder and chief justice; and as the recorder appears satisfied generally with the existing forms of procedure, I would not for the present think of imposing a new procedure, about which we are not likely to agree ourselves, upon them, especially with regard to assessors, against which institution the Governor appears to have strong objections.

Perhaps we might send the papers to the Law Commission, desiring them to draft an Act which should adopt the provisions advocated by the Straits authorities, as to the constitution of the courts, which might not appear to them liable to material objections, and which should not interfere with the practice or procedure further than as the Straits authorities were desirous of its being amended; and, where

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where the Straits authorities were at variance, that they should adopt what appeared to them a more eligible course, assigning reasons for the preference.

(signed) *A. Amos.*

MINUTE by the Honourable *A. Amos*, dated 20th November 1842.

Legis. Cons. 30 Dec. 1842. No. 24. Straits Settlements Judicature.

THE full communications from all the Straits authorities, which have been just received, appear to invite us to a consideration of our previous Minutes and Resolutions, with a view to the suggestions of local experience, and the dispositions and feelings of the parties to whom the working of the Act must be entrusted, as well as the community whose interests it affects.

The subject having become rather complicated, I propose to take a brief review of its leading features.

Mr. Fullerton appears to have first started the idea of a material reform in the Straits judicature, which he proposed to effect by dispensing with a professional judge, making a resident at each of the settlements a judge, the governor to go circuits for hearing appeals, with an appeal in certain cases to Calcutta.

Lord Auckland proposed to get rid of the professional judge; to have one resident for the three settlements, who should try causes and prisoners on his circuits; and that a judge from the Calcutta court should be sent to the Straits occasionally to hear appeals.

The Law Commissioners, in their Report and Draft Act, propose to have a separate court at the three settlements; thus to obviate the necessity of process emanating from a distant place, and to dispense with a register and sheriff for the three settlements, who were highly paid officers. The head clerk at each settlement to do the duties of register; and a sheriff to be appointed by the court of each settlement to act for that settlement only.

I collect that the Straits authorities, in their recent communication, do not object to this arrangement, though a modification is proposed of having two courts at each settlement, the inferior court to be administered by the assistant resident.

Upon this matter, therefore, the division of courts, the way for legislation appears to me very clear; and this I conceive to be the point upon which the whole reform turns. Mr. Bonham, it will be observed, retracts, in the most unhesitating manner, his former opinion that a professional resident judge was not necessary. In this all the Straits authorities agree; and the Law Commissioners, I conceive, have placed the matter out of reasonable doubt. I am not sure, however, that many of the expectations which have been entertained of a large saving to the revenue from a reform of the Straits judicature, were not built on the supposition of the recordership being abolished.

The economy of the Commissioners' scheme turns on diminishing the expense which followed from having a single court, out of which all process issued, and which was obliged occasionally to move from one settlement to another, attended by a cumbrous establishment. From this reform we are enabled to save much which is paid to the registrar, sheriff, and some other officers of the court. With regard to the proposed diminution of the professional judge's salary, that has nothing to do with the reform of system, for the judge's duties will be equally or more onerous under the new system. Mr. Bonham thinks the Commissioners have gone somewhat too far in curtailing the judge's salary; and that something more must be allowed to the head clerks, who, under the new system, will have to act as registrars.

Independently of economy, great advantage will arise from the speedy dispatch of justice, and a diminution of its expenses by the establishment of tribunals in which all process may begin and end in the immediate settlement where the parties reside.

Whether there shall be two courts or one court in each settlement, I think does not much matter; perhaps it will be more simple and convenient to have one court; and afterwards, by allotting particular cases for the adjudication of the assistant, all the advantages proposed by having two courts will be obtained.

I do not dwell on some projects and observations contained in the Straits papers concerning a division of the judicial and executive authorities. The Commissioners propose

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propose to leave this to the discretion of government, to be adopted when it may be more practicable than it appears to be at present.

These outlines, then, of the new system being agreed on, I proceed to matters, of importance certainly, but still of secondary consideration.

The principal part of the voluminous papers just received from the Straits turns upon one point: they do not like the appeal, except upon matters of law, to the professional judge in any case, and especially in the case of the governor being the lay judge. I should be inclined to concede this point, especially as their present practice, which they all approve of, appears not unreasonable. According to the present practice, the professional judge may grant a new trial upon any point of law. On such new trial the lay judge sits with him, and may record his opinion; but the professional judge decides. It may be observed that the appeal will be less necessary, as in the distribution of cases, those involving matters which the professional judge would be more competent to decide than the lay judge will be reserved for him.

Upon a variety of matters of detail, as the abolition of the grand jury and the courts of quarter and petty sessions and of requests, the Straits authorities concur generally with the recommendations of the Commissioners. I collect that they prefer a jury, or modification of a jury, to assessors, and that they think the present practice before the civil courts had better be continued, instead of the new practice recommended by the Commissioners; they think there should be greater restrictions on appeal to Calcutta. They expatiate on the increase of litigation, by appeals to the professional from the lay judge in matters of fact; but this objection will be removed, if such appellate power is modified as above proposed; it would seem that it would not work well upon other grounds. They suggest that a provision should be made for the trial of revenue matters, which are now tried before the assistant and an honorary magistrate. They think that ordinarily two circuits will be enough for the judge to make, and that it is not necessary that all causes involving points of English law should be reserved for him. They offer suggestions on the distribution of civil and criminal business; and they have a great deal to say about law agents. I think the subject of the exclusion of professional assistance, or assistance by an agent, from courts, is one requiring much consideration, and that it is not necessary to determine it at present.

Mr. Prinsep, officiating advocate-general, who has personal experience of the Straits settlements, is very much averse to assessors. He would retain the grand jury, but not make their presentments a necessary preliminary to a criminal trial.

Having thus stated the general effect, as it appears to me, of the whole papers and correspondence, I have prepared a draft, in which I have leant towards the recommendations of the Straits authorities, wherever no material objection to them occurred to me. I have also incorporated various sections from the draft of the Commissioners, which supply the chief details in which Mr. Prinsep thought my former draft deficient, though I fear that they may prevent readers from apprehending so distinctly the principal provisions of the contemplated reform, as they would if the subordinate parts were disposed of by way of general reference.

(signed) *A. Amos.*

Legis. Cons. 30 Dec. 1842. No. 25. Enclosure.

AN ACT for the Administration of Justice within the Straits Settlements.

I. WHEREAS it is expedient that "the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca," established by charter or letters patent of His Majesty King George the 4th, under date the 27th November A. D. 1826, and "the courts for the recovery of small debts" established in the said settlements under authority of the said charter, should be abolished, and that other provision should be made for the administration of justice in the said settlements: and whereas the Governor-general of India in Council has obtained the sanction of the Court of Directors of the East India Company to the abolition of the said Court of Judicature;

It is hereby enacted, that the jurisdiction of "the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca," established by the said charter, and all powers and authorities thereby granted to or vested in the said court, and the jurisdiction

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jurisdiction of the courts for the recovery of small debts established in the said settlements under authority of the said charter, shall cease and determine on the 31st day of .

II. And it is hereby enacted, that after the 31st of A.D. , the entire administration of justice, civil and criminal, within the said settlements, except in respect of causes and matters, and crimes and offences falling within the jurisdiction of courts of admiralty and vice-admiralty, and military courts, shall be vested exclusively in the courts constituted by this Act.

III. And it is hereby enacted, that on the 1st day of A.D. , a court of record for the administration of civil and criminal justice shall be established in the settlement of Singapore, which shall consist of three or more judges, and a court of record similarly constituted in each of the settlements of Prince of Wales' Island and Malacca; and the said courts shall be called respectively "The General Court of Singapore," "The General Court of Prince of Wales' Island," and "The General Court of Malacca."

IV. And it is hereby enacted, that whenever in this Act any of the said settlements shall be mentioned, all places subordinate or annexed thereto shall be understood to be included.

V. And it is hereby enacted, that one of the judges of the General Court of Singapore shall be also appointed a judge of the General Courts of Prince of Wales' Island and Malacca, and shall be called the circuit judge, and that such judge shall reside principally at Singapore, but shall visit each of the settlements of Prince of Wales' Island and Malacca three times in every year, and shall sit in court from time to time at each place in succession until he has disposed of the business that may be waiting for him, or may come before him during his visit.

VI. And it is hereby enacted, that such circuit judge shall be a barrister of the English or Irish bar, of not less than five years' standing, or an advocate of the Scottish bar, of not less than five years' standing; that he shall be appointed by the Governor-general of India in Council; that he shall receive such salary as the Governor-general of India in Council shall deem fitting; and that he shall not hold any other office, place, or employment, or be engaged in or carry on any trade, traffic, or business whatsoever, on pain that the acceptance of any such other office, place, or employment, or the engaging in or carrying on any such trade, traffic, or business, shall be in law an avoidance of his office.

VII. And it is hereby enacted, that the number of other judges to be appointed to the General Court in each of the said settlements, who shall be called resident judges of such settlement, and shall be distinguished as first, second, and so on, shall be determined by the Governor-general of India in Council, and may be reduced or increased from time to time as to the said Governor-general in Council may seem meet.

VIII. And it is hereby enacted, that such resident judges shall be appointed by the Governor of Bengal; and that it shall be competent to him to appoint either such professional persons as aforesaid, or persons being executive officers of government to be such judges.

IX. And it is hereby enacted, that the salary to be assigned to every such judge shall be determined by the Governor-general of India in Council, regard being had to his qualifications, and if he holds any other office under government, to the salary of that office.

X. And it is hereby enacted, that every judge appointed as aforesaid, before he shall be capable of exercising the office of judge, or magistrate, under this Act, shall take in open court, in such manner as shall be directed by the Governor of Bengal, an oath, or shall make a solemn declaration, as shall be ordered by the said Governor of Bengal, that he will, to the best of his knowledge, skill, and judgment, duly execute the office of judge or magistrate, and impartially administer justice in every cause, matter, or thing which shall come before him; of which oath or declaration a record shall forthwith be made.

XI. And it is hereby enacted, that every judge of the said courts shall have and use a seal with his official designation inscribed upon it, and that all notices, writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by such judge shall be sealed with such seal, and shall be signed by such judge.

XII. And it is hereby enacted, that a fit and proper person shall be appointed by each of the said general courts to be sheriff of the settlement, subject to the

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jurisdiction of such court, who shall continue in such office until another person shall be appointed by the same authority to succeed him therein; provided, that no person shall be appointed sheriff of any of the said settlements, and that no person having been duly appointed sheriff shall be removed from office, without the express consent of all the judges of such settlement.

XIII. And it is hereby enacted, that the sheriff of every settlement appointed as aforesaid shall execute all the writs, summonses, rules, orders, warrants, commands, and process of the several judges of the General Court of the settlement, and make returns of the same, together with the manner of the execution thereof, to the judge who shall have issued the same, and shall receive and detain in prison all such persons as shall be committed to his custody by any of the said judges, or any other person having competent authority so to do; and to do all such acts, matters, and things, and perform all such duties, as nearly as circumstances shall admit or require, as are or ought to be done and performed by the sheriff of any shire or county in England.

XIV. Provided, that the sheriff of Prince of Wales' Island shall appoint a deputy, for whom he shall be responsible, to execute the process issued by the resident judge in Province Wellesley.

XV. And it is hereby enacted, that whenever any of the judges of any of the said courts shall direct and award any process against the said sheriff, or award any process in any cause, matter, or thing, wherein the said sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot, or ought not by law, to execute the same, in every such case such judge shall name and appoint some other fit person to execute and return the same; and the said process shall be directed to the said person so named for that purpose, and the cause of such special proceedings shall be suggested and entered on the records of the said court.

XVI. And it is hereby enacted, that the several judges of the said courts shall have such jurisdiction and authority as the Court of Queen's Bench and the justices thereof, and also as the high Court of Chancery, and the Courts of Common Pleas and Exchequer respectively, and the several judges, justices, and barons thereof respectively, have and may lawfully exercise within that part of the United Kingdom called England, in all civil and criminal actions and suits, and in matters concerning the revenue; and that the said judges severally shall have and exercise the jurisdiction exercised by the ecclesiastical courts in England so far as the several religions, manners, and customs of the inhabitants of the said settlements will admit.

XVII. And it is hereby enacted, that each of the said courts within the settlement for which it is constituted shall have full power to hear, examine, try, and determine, in manner hereinafter mentioned, all actions and suits which shall or may arise or happen, or be brought or promoted, upon or concerning any trespasses or injuries, of what nature or kind soever; or any debts, duties, demands, interests, or concerns, of what nature or kind soever; or any rights, titles, claims, or demands of, in, or to any houses, lands, or other things, real or personal, within such settlements, or touching the possession, or any interest or lien in or upon the same; and all pleas, real, personal, or mixed, the causes of which shall or may hereafter arise, accrue, and grow, or shall have heretofore arisen, accrued, and grown, against the East India Company, and against any persons who shall be resident within such settlement, or who shall have resided there, or who shall have any debts, effects, or estate, real or personal, within the same, and against the executors and administrators of such persons.

XVIII. Provided always, that it shall not be competent to such court to try or determine any suit or action against any person who shall never have been resident in the said settlement, nor against any person then resident in Great Britain or Ireland, unless such suit or action against such person so then resident in Great Britain or Ireland shall be commenced within two years after the cause of action arose, and the sum to be recovered be not of greater value than 12,000 dollars.

XIX. Provided always, that nothing in this Act shall extend, or be construed to extend, to subject the person of the governor or resident, or any of the counsellors of the said settlements, or the person of any judge of Singapore, Prince of Wales' Island, and Malacca, to be arrested or imprisoned in any civil suit, action, or proceeding in any of the said courts.

XX. And

XX. And it is hereby enacted, that the process and the practice of the said courts shall be regulated according to such forms and rules as may be established by the judges of the said courts, subject to the approval and confirmation of the Governor-general in Council, as are now used in the aforesaid court of judicature established by charter, or as near thereto as circumstances will permit; and that all laws now in force, and all provisions of the said charter for regulating and for the better execution of the process and practice of the aforesaid court of judicature shall be applicable to the process and practice of the courts established by this Act.

XXI. Clause 1. And it is hereby enacted, that the plaints received in the said courts shall be disposed of as follows:

Clause 2. In the court of Singapore, when the circuit judge is at the settlement, on every day on which any of the judges shall sit for the purpose of receiving plaints, all the plaints received shall be laid before the circuit judge, who shall distribute them for trial and decision among all the judges, including himself.

Clause 3. In distributing the plaints the circuit judge shall endeavour to give to each judge a share of them proportioned to the time which he is able to devote to judicial business, and those kinds of suits which he thinks him best qualified to decide, and in which he shall have no personal interest and have no connexion with or relation to the parties.

Clause 4. Provided, that the circuit judge shall reserve to himself all cases involving difficult or doubtful points of law, and questions of importance which have not previously been determined; all suits in which government is a party, and all suits in which the amount involves a dispute exceeding 10,000 rupees, wherein an appeal may be preferred to the Privy Council under the Rules passed by Her Majesty in Council of date the 10th April 1838; and that all suits in which he is himself a party or related to or connected with a party, or in any wise interested, shall be assigned to a resident judge.

Clause 5. In the court of Singapore, in the absence of the circuit judge, and at all times in the courts of Prince of Wales' Island and Malacca, all the plaints received shall be laid before the first resident judge, who shall distribute them in the manner directed in the 3d and 4th clauses of this section.

Clause 6. Provided, that the circuit judge shall have power to call up and place on his own file any causes assigned to other judges which he shall deem it proper to hear and decide himself, and to transfer to other judges any causes assigned to himself which he shall think not to be of a nature to require his attention.

XXII. And it is hereby enacted that one of the resident judges of the court of Prince of Wales' Island shall sit separately in Province Wellesley, and shall receive all plaints that may be preferred to him against persons residing in the said province, of which he shall reserve to himself all such as according to the arrangement for the distribution of causes which shall be observed in the said court would fall to him if he was sitting in it, and shall remit all others to the first resident judge, to be disposed of as if they had been preferred in the said court.

XXIII. And it is hereby enacted, that every judge to whom a plaint is assigned for trial shall immediately place it on his file, and shall direct process to be issued, and proceed with the cause in such manner and according to such rules and forms of practice as may be established by the judges of the said court, under the approval and confirmation of the Governor-general in Council.

XXIV. And it hereby enacted, that in the absence of the circuit judge it shall be competent to the first resident judge of any of the courts, in any suit on the file of the chief judge in such court, to take all steps which cannot be delayed without risk of injustice.

XXV. And it is hereby enacted, that every judge in each of the said courts shall be empowered to administer to witnesses and others, whom he may see occasion to examine in any suit or proceeding before him, proper oaths and affirmations, that is to say, to such persons as profess the Christian religion, the oath upon the Holy Evangelists of God; and to Quakers, Moravians, and others, who are exempted by law from taking oaths in the courts in England, the affirmation according to the form used in England for that purpose; and to Hindoos and Mahomedans, the affirmation prescribed by Act No. V. of 1840 of the Governor-general of India in Council; and to others, such oath in such manner and form as he shall deem most binding on their consciences respectively: and the depositions having been reduced into writing, and subscribed by the judge, shall be filed of record; and in case any person so cited shall refuse or wilfully neglect to

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appear and be sworn, or, being Quakers, Moravians, or others exempted as aforesaid, to affirm, and be examined, the judge shall be empowered to punish such persons so refusing or wilfully neglecting, as for a contempt, by fine and imprisonment.

XXVI. And it is hereby enacted, that no person shall be excluded from giving evidence in any suit or other proceeding in any of the said civil courts by reason of his being interested in the subject of litigation, or in the merit of the suit.

XXVII. And it is hereby enacted, that all fees and fines levied under this Act by each of the said courts shall be paid monthly into the treasury of the East India Company for the settlement at which such court is held.

XXVIII. And it is hereby enacted, that every judge of each of the said courts shall be empowered to award and issue a writ or writs or other process of execution, directed to the sheriff, commanding him to seize and deliver the possession of the houses, lands, or other things recovered in and by judgments, sentences, or decrees of himself or his predecessor, or to levy any sum of money which shall be so recovered, or any costs which shall be so awarded, as the case may require, by seizing and selling so much of the houses, lands, debts, or other effects, real and personal, of the party or parties against whom such writ or writs shall be awarded, as will be sufficient to answer and satisfy the said judgments, or to take and imprison the body or bodies of such party or parties until he, she, or they shall make such satisfaction, or to do both, as the case may require: And it is hereby enacted and appointed, that the several debts to be seized as aforesaid shall from the time the same shall be extended and returned into the said court be paid and payable in such manner and form as the judge in each case shall appoint, and no other, and such payment and no other shall from thenceforth be an absolute and effective discharge for the said debts and every of them respectively.

XXIX. And it is hereby enacted, that all money, jewels, precious stones, and securities of the suitors of each of the said courts which shall be ordered into court, or to be paid, delivered, or deposited for safe custody, shall be paid, delivered into, or deposited in, the public treasury of the East India Company at the settlement at which the court shall be held, to be kept and deposited with the cash, precious stones, jewels, and effects of the said Company, subject to such orders and directions in every case as the judge to whose province it belongs shall from time to time think fit to make concerning the same, for the benefit of the suitors; and each judge shall from time to time order and direct any money belonging to suitors of the court in cases within his province to be invested, at interest or without interest, for the purpose of remittance to any place without the said settlement as there may be occasion, for the use and benefit of the parties respectively entitled thereto, on any bills, bonds, or securities of the said Company, or any other bills, bonds, or securities as such court shall see fit to order and direct; and all executors, administrators, guardians, and trustees whatsoever, acting with respect to such investments at interest or for remittance, under the directions of judges of the courts, shall be indemnified against all risk or loss to be occasioned thereby.

XXX. And it is hereby enacted, that the treasurer of the said Company at each of the said settlements shall be, and be called, the accountant of the General Court of such settlement, and shall act, perform, and do all matters and things necessary to carry into execution the orders of the several judges of the said court, relating to the payment or delivery, or depositing of the suitors' money, jewels, precious stones, and securities, into or in the said treasury, and taking the same out again, and investing the money of the suitors at interest or for remittance, and keeping the accounts thereof, and for doing such other matters relating thereto, under such rules, methods, and directions as shall from time to time be made and passed by the several judges of the said court.

XXXI. And it is hereby enacted, that in case any person shall have any action or suit against the said East India Company, such person shall be at liberty to proceed therein in like manner as hereinbefore mentioned; and it shall and may be lawful for the chief judge in any such suit or action duly brought in any of the said courts to issue a summons for the appearance of the said Company, to be served upon the governor or president and the resident councillor of the settlement in which the cause of action or suit shall have arisen, and thereupon the said governor or president and such resident councillor as aforesaid shall appoint such person or persons to appear and act for the said Company as they shall see fit; and such person or persons shall be admitted to an answer and defend such suit in the name and for and on the behalf of the said Company; and the said chief judge shall

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shall be empowered to try, hear, and determine all such actions and suits in the said courts against the said Company, and to give judgment and costs, and award execution, and do and order all such other matters and things therein, as far as the case will admit, in such manner as herein is mentioned, as to any person or persons whomsoever, subject, nevertheless, to such right of appeal by either party as herein is mentioned; and in like manner, if the said Company shall have any action or suit against any person or persons, it shall and may be lawful to and for the said governor or president and councillor, or any two of them, the governor or president being always one, to authorise any person or persons, for and on behalf of the said Company, and in their name, to make complaint thereof in writing to the court to whose jurisdiction the matter belongs and the chief judge sitting in such court shall proceed therein, and shall hear and determine the same as in other cases; and in case judgment or sentence shall be given against the said Company, shall award costs, to be levied upon the goods and effects of the said Company as they shall see occasion, subject, nevertheless to such appeal by either party as herein is mentioned.

XXXII. And it is hereby enacted, that all causes, suits, and business of ecclesiastical cognizance which shall be brought before the said courts shall be distributed among the judges in the manner directed in this Act; and that the manner of proceeding therein shall be as near as may be in conformity with the rules hereinbefore prescribed for all other suits.

XXXIII. And it hereby enacted, that the circuit judge sitting on the general court of any of the said settlements, and in his absence the first resident judge, shall have full power to grant probates under his official seal of the last wills, an testaments of all or any of the inhabitants of the said settlements, and of all other persons who shall die and leave personal effects within the jurisdiction of such court, and to commit letters of administration, under his official seal, of the goods, chattels, credits, and all other effects whatsoever, within the said jurisdiction, of the persons aforesaid, who shall die intestate, or who shall not have named an executor resident within the said settlement, or where the executor, being duly cited, shall not appear and sue forth such probate; annexing the will to the said letters of administration, when such person shall have left a will without naming any executor, or any person for executor, who shall then be alive and resident within the said settlements, and who being duly cited thereunto, will not appear and sue forth a probate thereof; and to sequester the goods and chattels, credits, and other effects whatsoever, of such persons so dying, in cases allowed by law, as the same is, and may now be, used in the diocese of London; and to demand, require, take, hear, examine, and allow, and if occasion require, to disallow and reject, the account of them, in such manner and form as is now used or may be used in the said diocese of London, and to do all other things whatsoever needful and necessary in that behalf.

XXXIV. Provided always, that the said chief or other judge in such cases as aforesaid, where letters of administration shall be committed with the will annexed for want of an executor appearing in due time to sue forth the probate, shall reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor or executors whenever he or they shall duly appear and sue forth the same; and the chief or other judge shall grant and commit such letters of administration to any one or more of the lawful next of kin of such person so dying as aforesaid, and being then resident within any of the said settlements, and being of the age of 21 years; and in case no such person shall then be residing within any of the said settlements, or being duly cited, shall not appear and pray the same to any competent officer of the said court, or to such person or persons, whether creditor or creditors or not of the deceased person, as the chief or other judge shall see fit.

XXXV. Provided, that probates of wills and letters of administration to be granted by the said chief or other judge shall be limited to such money, goods, chattels, and effects as the deceased person shall be entitled to within the jurisdiction of the said court, except in the cases specified in Section XIX.

XXXVI. And it is hereby further enacted, that every person to whom such letters of administration shall be committed, shall, before the granting thereof, give sufficient security by bond, to be entered into to the said Company, for the payment of a competent sum of money, with one, two, or more able securities, respect being had in the sum therein to be contained, and in the ability of the sureties, to the value of the estate, credits, and effects of the deceased, which bond, if administration shall be granted to an officer of the said court, shall be deposited in the public

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public treasury of the said settlement; and if granted to any other person or persons, shall be deposited in the said court among the records thereof, and there safely kept, and a copy thereof shall be also recorded among the proceedings of the said court.

XXXVII. And the condition of the said bond shall be to the following effect: that if the above bounden administrator of the "goods, chattels, and effects of the deceased, do make or cause to be made a true and perfect inventory of all and singular the goods, credits, and effects of the said deceased, which have or shall come to the hands, possession, or knowledge of him, the said administrator, or the hands or possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited into the General Court (of Singapore, Prince of Wales' Island, or Malacca, as the case may be) at or before a day therein to be specified; and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the deceased at the time of his death, or which at any time afterwards shall come to the hands or possession of such administrator, or to the hands or possession of any other person or persons for him, shall well and truly administer according to law, and further shall make, or cause to be made, a true and just account of his said administration at or before a time therein to be specified, and afterwards from time to time as he, she, or they shall be lawfully required; and all the rest and residue of the said goods, chattels, credits, and effects, which shall be found from time to time remaining upon the said administration accounts, the same being first examined and allowed of by the said chief or other judge sitting in the said court, shall and do pay and dispose of in a due course of administration, or in such manner as the said court shall direct; —then this obligation to be void and of non-effect, or else to remain in full force and virtue." And in case it shall be necessary to put such bond in suit for the sake of obtaining the effect thereof for the benefit of such person or persons as shall appear to the said chief or other judge to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit, or any part thereof, such person or persons shall, by order of the said chief or other judge, be allowed to sue the same in the name of the said Company; and the said bond shall not be sued in any other manner; and the said chief or other judge shall be empowered to order that such bond, as aforesaid, shall be put in suit in the name of the said Company.

XXXVIII. And it is hereby enacted, that when probates of wills and letters of administration shall be granted as aforesaid, certain periods shall be fixed within which the persons to whom they shall be granted shall from time to time, until the effects of the deceased persons shall be fully administered, pass their accounts relating thereto before the circuit or other judge in the said court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed, then or at any earlier time, if the said chief or other judge shall see fit so to direct, the person or persons to whom such probate or administration shall be granted shall pay and deposit the balance of money belonging to the estate of the deceased then in his, her, or their hands, and all money which shall afterwards come into his, her, or their hands, and also all precious stones, jewels, bonds, bills, and securities belonging to the estate of the deceased, into and in the treasury of the said Company, in the name of the treasurer, as accountant of the court, to abide the orders of the said circuit or other judge, or shall otherwise dispose of such money, goods, chattels, and securities as the said chief or other judge shall direct; and the said circuit or other judge shall from time to time make such order as shall be just for the due administration of such assets, and for the payment or remittance thereof, or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in the said settlement, who may be entitled thereto, or any part thereof, as creditors, legatees, or next of kin, or by any other right or title whatsoever; and it shall be lawful for the said chief or other judge to allow to any executor or administrator of the effects of any deceased person or persons (except as herein mentioned) such commission or per-centage out of his, her, or their assets as shall be just and reasonable, for their pains and trouble therein.

XXXIX. Provided always, that no allowance whatever shall be made for the pains and trouble of any executor or administrator who shall neglect to pass his accounts at such time, or to dispose of any money, goods, chattels, or securities with which he shall be chargeable, in such manner as in pursuance of any general or special rule or order of the said court shall be requisite; and moreover, every executor or administrator so neglecting to pass his accounts, or to dispose of any such money,

money, goods, chattels, or securities with which he shall be charged, shall be charged with interest, at the rate to be then current within the said settlement, for such sum and sums of money as from time to time shall have been in his hands, whether he shall or shall not make interest thereof.

XL. And it is hereby enacted, that in the cases of persons dying in any of the said settlements, and leaving personal effects in more than one of the settlements, applications for probate or letters of administration shall be made to the chief judge only, whenever he shall be holding a court at any of the settlements in which such property may be, and probates and letters of administration granted by the chief judge in such cases shall have force in respect of all money, goods, chattels, and effects which the deceased was entitled to in all or any of such settlements.

XLI. Provided, that in the absence of the circuit judge, the first resident judge of each of such settlements may take order for securing the property left therein by the deceased, until probate or letters of administration shall be issued by the circuit judge.

XLII. And it is hereby enacted, that the chief judge, and in his absence the first resident judge of each of the said courts, shall have authority to appoint guardians and keepers for infants and their estates, within the jurisdiction of such court, according to the order and course observed in England; and also guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their understanding or reason, so as to be unable to govern themselves and their estates, and in such cases to inquire, hear, and determine, by inspection of the person, or such other ways and means by which the truth may be best discovered and known.

XLIII. Provided, that when the estates of such incapacitated persons are situated in more than one of the said settlements, the appointment of keepers of such estates shall be made by the chief judge only; but the first resident judge in every such settlement shall take order intermediately for the security thereof.

XLIV. Clause 1. And it is hereby enacted, that appeals from the decrees made by the said courts in original suits shall be allowed under the following rules and provisions:

Clause 2. In every suit determined by any resident judge, an application may be made for a new trial to the circuit judge upon points of law. If a new trial be granted, it shall take place before the circuit judge and the judge who originally tried the case, and if any difference of opinion shall arise between the judges upon such new trial, the case shall be decided according to the opinion of the circuit judge; provided, that the judge who originally tried the case shall be at liberty to record his opinion and reasons among the proceedings.

Clause 3. Any party desiring to apply for a new trial under this section, shall present a petition to the judge to whom the appeal lies, in person or by an agent, within one month from the date when the decision to which it relates was passed.

Clause 4. Provided, that such appeal shall be admissible, at the discretion of the appeal judge, at any time between one month and three months from such date, upon good and substantial cause being shown for such delay.

XLV. Clause 1. And it is hereby enacted, that a special appeal shall lie to Her Majesty's Supreme Court at Calcutta from decisions for the recovery of property or money exceeding in value or amount 5,000 rupees, passed by the circuit judge, and by the first resident judges of the said courts respectively, upon appeals heard by them under this Act, which shall appear to be inconsistent with the law applicable to the case, or with some usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice upon which there may be reasonable doubts, under the following rules:

Clause 2. An application for a special appeal shall be presented to the court which passed the decree complained of, within the time limited for the presentation of regular appeals.

Clause 3. Every petition for a special appeal shall be accompanied with copies of the several decrees passed in the case, and the petition shall state precisely the point or points of law, usage, or practice in regard to which the decree of the first appellate court is impugned.

Clause 4. In every case of special appeal admitted as aforesaid, Her Majesty's Supreme Court at Calcutta shall determine the point or points certified as above directed, and no other point or part of the case whatever.

Clause 5. And it is hereby provided, with respect to both regular and special appeals to Her Majesty's Supreme Court at Calcutta, that when the petition of

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appeal shall be presented after the term of one month from the date of the decree, but within the term of three months, the lower court shall receive the petition, and in forwarding it, shall express an opinion upon the causes assigned for the delay.

XLVI. Clause 1. And it is hereby enacted, that criminal justice shall be administered by the courts hereby established after the following manner:

Clause 2. The said circuit judge shall from time to time hold a court of oyer and terminer and gaol delivery, in and for each of the said settlements, and shall hear and determine, by the oaths or affirmations of a jury of good and sufficient men, or of the major part thereof, all treasons, murders, and other crimes done or committed within such settlement, subject by law to the punishment of death, transportation, or imprisonment for life, or 14 years, or any longer term, without presentment or indictment by a grand jury; provided, that a grand jury shall be summoned to attend every such court of oyer and terminer, and shall have power to make such presentments as have hitherto been made in the court of judicature established by charter in the said settlements, and as they may deem it expedient to make; provided also, that the persons who may be summoned on grand juries shall be eligible to serve also upon the petit juries to be held before such court of oyer and terminer.

Clause 3. And the first resident judge of each settlement shall hold a court so often as there may be occasion for the trial of offences subject to a punishment less than any of the punishments aforesaid, and shall proceed without any presentment or indictment by a grand jury, but with a petit jury consisting of six persons.

Clause 4. And when in any case under trial by the first resident judge of any settlement it shall appear by the evidence that the crime committed is liable to a sentence which can be passed by the circuit judge only, the said judge shall quash the proceedings and shall order the case to be reserved for trial by the circuit judge.

Clause 5. Likewise in any case committed for trial before the first resident judge, if it shall appear on a perusal of the proceedings before the magistrate that the case is one which ought to be tried by the circuit judge, he shall order the case to be reserved for trial by him.

Clause 6. And in any case tried by the first resident judge of any settlement in which he has found the accused guilty, if a doubtful point of law is involved in the case, it shall be competent to such judge to refer the point for the opinion of the circuit judge, and he shall pass sentence according to the opinion delivered by the chief judge on such reference.

Clause 7. And the circuit judge and other judges aforesaid respectively shall from time to time, as there may be occasion, issue their warrant or precept to the sheriff of the settlement, commanding him to summon a convenient number, to be therein specified, of the inhabitants or persons commorant at the settlement, to serve as jurors on the trial of all persons charged with crimes to be tried by a jury; and if any person or persons summoned to serve as jurors aforesaid shall refuse or neglect to attend according to such summons, or to be sworn, or to make the affirmation required of them, or shall make other default, the said circuit judge, and other judges respectively, shall be empowered to punish such contempt by fine and imprisonment for a reasonable time to be limited, or by both; and the said circuit judge and other judges shall be empowered, in like manner and under the like penalties, to cause all such witnesses as justice shall require to be summoned, and to administer to them and each of them the like oaths and affirmations as may be administered to witnesses in civil suits under this Act, and to proceed to hear, try, and determine the crimes and offences upon which persons are charged before them and to give judgment thereupon, and to award execution thereof; and in all respects, except in so far as it is otherwise provided by this Act, to administer criminal justice in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as the courts of oyer and terminer do or may in England, due attention being had to the several religions, manners, and usages of the native inhabitants.

Clause 8. And the second resident judge of each of the said settlements shall be magistrate and superintendent of police and coroner in and for the said settlement; and the resident judge in Province Wellesley shall be magistrate and superintendent of police and coroner in and for the said province.

Clause 9. And such magistrate shall be vested with all the powers of justices of

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of the peace in England, for the purpose of keeping the peace and for pursuing and arresting and bringing offenders to justice, and for doing all other acts which by virtue of any law or statute now in force in the said settlements may lawfully be done by a justice of a peace therein.

Clause 10. And such magistrate, as coroner, shall exercise the like powers, authorities, and jurisdictions as by law may be exercised by coroners elected for any county or place in England; provided, that he may hold an inquest with a jury consisting of any number of persons not less than three.

Clause 11. And such magistrate shall hold a preliminary investigation in cases of a nature to be tried by the circuit judge, or by the first resident judge, and shall commit the persons accused, or hold them to bail to take their trial in due course, or shall discharge them; and shall hold a court from time to time as may be necessary for the trial and punishment by himself, in such summary way as may be most consistent with the attainment of substantial justice, of crimes, offences, and misdemeanors subject to a punishment not exceeding ordinary imprisonment for six months or a fine of 200 rupees; and shall have power, in like manner and under the like penalties as aforesaid, to summon witnesses and to administer oaths and affirmations to them, and to punish contempts.

Clause 12. And the Governor of Bengal is hereby empowered to grant commissions, or to authorise the governor or the resident councillor in any of the said settlements to grant commissions, to any servants of the East India Company, or other inhabitants of the settlement, to assist the said magistrate in his executive functions, and to be his deputies in the office of coroner, and therein to exercise the same powers as he is hereby authorised to exercise, in concurrence with him and under his direction.

Clause 13. And the Governor of Bengal shall give such orders as he shall deem meet for the appointment of constables and subordinate peace officers to perform the duties usually performed by such officers in England, under the direction and control of the said magistrate.

Clause 14. And the said magistrates and assistants to magistrates, and all constables and peace officers, shall be subordinate to, and all their acts and proceedings shall be liable to be inquired into, annulled, corrected, and dealt with by the circuit judge of the said settlement, and by the like method and process, as near as may be, as justices, magistrates, and peace officers are subordinate to the Court of Queen's Bench in England.

Clause 15. And it is hereby provided and declared, that the courts hereby established shall not be competent to hear, try, and determine any charge against any of the judges thereof, nor any charge not being for treason or felony against the governor or any of the councillors.

Clause 16. And it is hereby enacted, that a copy of the proceedings in all cases determined by a resident judge, either with a jury or summarily, shall be furnished to the circuit judge at the earliest opportunity after his arrival at the settlements where the proceedings have taken place; and it shall be lawful for him to direct a new trial upon points of law, in like manner as in civil cases, without any special application being made to him for that purpose; and it shall be lawful for the circuit judge, at his discretion, to reserve any points of law occurring in criminal trials before himself, or before any resident judge, for the opinion of Her Majesty's Supreme Court at Calcutta.

XLVII. And it is hereby enacted, that any writ, warrant, or other process, issued by any judge or magistrate of any of the courts hereby established, may be executed within the jurisdiction of any other of the said courts in manner following: A copy of such writ, warrant, or other process, authenticated by the attestation of the judge or magistrate issuing the same, shall be transmitted by such judge or magistrate to any judge of the General Court for the settlement in which the process is to be executed, who upon the receipt thereof shall endorse the process, and direct it to be executed by the sheriff of the settlement, in the same manner and subject to the same rules as if it were a process issued by the said court; and all persons disobeying or obstructing the execution thereof, shall be punishable by the said judge as for disobedience or obstruction of process so issued.

XLVIII. Provided, that the judge to whom any such process shall be transmitted for execution as aforesaid may return the same for amendment if it shall appear to be defective in form.

XLIX. And provided, that the judge to whom any writ, warrant, or other process for the seizure or detention of any person shall be transmitted for execution

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as aforesaid, shall have authority, by his endorsement thereon, to direct that bail may be taken, specifying in such endorsement the amount and number of sureties, and for this purpose to call for such documents and to make such inquiry as he shall think proper.

L. And it is hereby enacted, that the Governor of Bengal shall determine and order whether any and what oaths or affirmations shall be taken or made, and in what manner, by the sheriffs, coroners, and other officers who shall be appointed under this Act.

LI. And it is hereby enacted, that a table of the fees to be taken in the said courts for any business to be done therein shall be settled by the Governor of Bengal, and shall be varied from time to time at the discretion of the said governor, subject always to the approbation and correction of the Governor-general of India in Council; and provided, that the table of fees which shall be in force in the court of judicature of Prince of Wales' Island, Singapore, and Malacca at the time when this Act shall come into operation shall be observed in the courts established by this Act, until a new table of fees shall be settled as aforesaid.

LII. And it is hereby enacted, that indictments, informations, actions, suits, causes, and proceedings, depending in the said court of judicature and courts of request which by this Act are abolished, whether originally instituted in such court in any branch of its jurisdiction, or transferred from any other court or courts, shall not by such abolition be abated, discontinued, or annulled, but the same shall be transferred in their then subsisting condition respectively, to, and shall subsist and depend in the said courts hereby established, according to the several jurisdictions hereby given to such courts, severally and respectively, to all intents and purposes as if they had been respectively commenced, brought, found, presented, or recorded in the said courts hereby established; and the said courts hereby established are authorised and empowered to proceed accordingly in all such indictments, informations, actions, suits, causes, and proceedings to judgment and execution, and to make such rules and orders respecting the same, and also respecting any sum or sums of money belonging to the suitors of the said court of judicature and courts of requests as the said courts might have made, or as the said courts hereby established are empowered to make in causes, suits, or proceedings commenced or depending before the said courts hereby established; for which purpose it is enacted, that all the records, muniments, and proceedings whatsoever, of or belonging to the said court of judicature or courts of requests, or which ought to be deposited with such courts respectively, shall be delivered and deposited and preserved amongst the records of the General Courts of Singapore, Prince of Wales' Island, and Malacca.

LIII. And it is hereby enacted, that the session judge, with the resident judges of the General Courts of Singapore, Prince of Wales' Island, and Malacca, hereby established, shall frame such process and make such rules and orders for the execution of the same in all suits to be commenced, sued, or prosecuted, and in all criminal proceedings within their jurisdiction, as shall be necessary for the due execution of all or any of the powers hereby committed thereto, and shall make such rules with respect to the qualification, appointment, form of summoning, challenging, and service of jurors and assessors as they may deem expedient and proper, with an especial attention to the different religions, manners, and usages of the persons who shall be resident or commorant within their jurisdiction, and accommodating the same to their several religions, manners, and usages, and to the circumstances of the country, so far as the same can consist with the due execution of law and the attainment of substantial justice.

LIV. Provided always, and it is further enacted, that all forms of processes, and rules and orders for the execution thereof, which shall be framed by the said courts, shall be transmitted to Her Majesty's Supreme Court at Calcutta, to be by the said court communicated, with their observations, to the Governor-general of India in Council, for correction, approbation, or refusal; and such process shall be used, and such rules shall be observed, until the same shall be repealed or varied by the Governor-general of India in Council.

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Legis. Cons. 30 Dec. 1842. No. 26.

Draft of Act for Straits Settlements.

MINUTE by the Honourable *H. T. Prinsep.*

I AM prepared to concur in the draft now submitted by Mr. Amos, as amended from that of the Law Commission, with one or two very immaterial alterations that do not affect the principle of the reforms contemplated.

The alterations I have to suggest are in sections 20 and 23. Mr. Amos, under the differences of opinion which exist, is for striking out of the draft of the Law Commissioners the rules prescribing forms of proceeding and of pleading, and I entirely concur in the propriety of this. But instead of providing that these forms shall continue as now prescribed in the charter, and practised or established under rules of court which would compel reference for argument to an abrogated instrument, and the practice of a court no longer existing, I should much prefer that the rules of practice shall be left to be established for the new courts by the judges, subject to approval and confirmation by the Governor-general in Council. We may then executively prescribe that it is not intended to make alterations, and require the existing rules to be made out and embodied into a code of rules, to be submitted for formal approval. This plan will have the same effect as the draft, as it stands amended by Mr. Amos, with the advantage of allowing, *mutatis mutandis*, a set of rules to be prepared and amended from time to time, specifically to suit the circumstances of the new courts.

Another amendment I would propose is to omit from section 31 the provision allowing the court to sequester government property to compel appearance to defend a suit. This is part of the old leaven of the East India Company's commercial character, and is introduced into the Royal charters which established courts hostile to the Company's governments; but there can be no necessity for our adopting the same course with courts to be established under our legislative Acts. The provision does not seem to be necessary for any purpose contemplated, as the Act prescribes that the executive shall nominate a person to defend a suit; there will therefore be culpability if the duty be omitted, and the responsibility for this ought to suffice.

Calcutta, 24 Nov. 1842. (signed) *H. T. Prinsep.*

(No. 977.)

Legis. Cons. 30 Dec. 1842. No. 27.

EXTRACT from the Proceedings of the Honourable the President of the Council of India in Council, in the Financial Department, under date the 30th November 1842.

(No. 130 of 1842.)

From the Governor of Prince of Wales' Island, Singapore, and Malacca, to *G. A. Bushby*, Esq. Secretary to Government, Fort William.

Sir,

Financial Dep.

I DO myself the honour to forward, for the information of the Honourable the President in Council, a statement of the receipts and disbursements of Prince of Wales' Island, Singapore, and Malacca, during the past official year. The total expenditure of 1841–42 exceeds that of 1840–41 by 20,307 rupees; still the increasing revenue derivable from Singapore has diminished the general expenses of the three places to the state by 1,29,147 rupees, during the same period. The total expenditure of every description, including military and convicts, being during the past official year 13,90,692, the receipts 7,25,681 rupees, shows the expenditure to exceed the receipts by 6,64,831 rupees.

2. Taking the expenses of these settlements together, exclusive of military and convicts, the receipts exceed the disbursements by 56,691 rupees. This, I am of opinion, may be fairly placed against the expenses of the convicts, which amounted during the same period to 88,684 rupees; for the difference of 31,993 rupees can scarcely be considered too large a sum for the benefit that the several presidencies derive from being able to get rid of their most atrocious criminals, amounting at present to the number of 2,250 at the three places.

	88,684
	56,691
	31,993
Singapore	1,265
Penang	778
Malacca	207
	2,250

3. From the above remarks, it will be seen that the expenses of the Straits

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settlements beyond their receipts principally arise from the military force employed for their protection. This force has heretofore consisted of two regiments of Madras native infantry, a company of Golundauze, and half a company of Europeans; and during the past official year, as nearly as can be ascertained, the expenses thereof amounted to 6,32,838 rupees. In my letter of the 9th August last, I ventured to suggest that a strong regiment of 1,000 privates and 200 Golundauze would answer all useful purposes; and should this be approved of, these settlements will then cost the state about 3 ½ lacs of rupees.

4. On various occasions I have pointed out how the revenues of these stations might be made to meet their expenditure by the imposition of custom-house duties; the home authorities, however, appear to be determined they shall remain "free ports." It is not quite just, therefore, to say our receipts do not pay the expenses, seeing if they were managed as are Calcutta, Madras, and Bombay, and all other places maintained entirely for the convenience and extension of commerce, a different result would immediately appear.

5. To enable the Honourable the President in Council to judge of the truth or otherwise of this position, I subjoin a statement of the value of the imports and exports into and from Singapore alone, during the past 10 years. This will show the extent and nature of the trade, which, from Mr. Phipp's "Practical Treatise on the China and Eastern Trade," published in Calcutta in 1835, page 270, I find amounted at that time to something more than one-half of the trade of that city.

	Imports.	Exports.
1832-33 - - - -	1,82,85,558	1,59,12,740
1833-34 - - - -	1,81,56,385	1,94,71,297
1834-35 - - - -	1,45,03,362	1,51,24,230
1835-36 - - - -	1,48,61,122	1,40,25,850
1836-37 - - - -	1,69,05,093	1,56,58,066
1837-38 - - - -	1,83,14,849	1,59,31,669
1838-39 - - - -	1,66,09,411	1,52,42,898
1839-40 - - - -	2,17,90,194	1,86,35,189
1840-41 - - - -	2,97,44,135	2,43,10,688
1841-42.		

6. The number of square-rigged vessels entering the port during the past 10 years is as follows:

	Number.	Total Tonnage.
1832-33 - - - -	420	120,443
1833-34 - - - -	475	137,298
1834-35 - - - -	517	156,513
1835-36 - - - -	539	166,053
1836-37 - - - -	541	170,635
1837-38 - - - -	520	150,532
1838-39 - - - -	574	178,796
1839-40 - - - -	552	148,803
1840-41 - - - -	762	220,217
1841-42.		

7. The

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7. The population of the three places during the same period has ranged thus:

	Penang and Province Wellesley.	Singapore.	Malacca.
1832	80,615	19,715	—
1833	86,275	20,978	31,916
1834	- - -	26,339	29,260
1835	- - -	- - -	31,908
1836	86,009	29,984	31,825
1841	101,573	39,681	46,096

Singapore.

8. At this station the disbursements of every description, including the military and convicts, exceeded its receipts, during 1841–42, by 77,252 rupees; but I am in hopes that during the present year, in consequence of the reduction of the military force, this station will pay its own expenses; and this it will certainly do if one-half of the expenses of the convicts are debited, as it appears to me they should be, to the general government of India, and not to Singapore, where they are sent solely for the convenience of the governments of India. Exclusively of military and convicts, the revenue exceeded the local charges by a little more than two lacs of rupees.

Penang.

9. At this station the total expenses exceeded the receipts by 3,49,055 rupees; they will, however, be materially reduced this year by the reduction of the military force; still, however, it will be seen by the statement that, exclusively of the military and convicts, the local charges exceeded the revenue by 55,709 rupees. Little or no improvement can, I fear, be expected in the revenues at Penang, though something may be obtained at Province Wellesley by the sale of lands.

10. The only means that I can perceive of ever making the receipts and disbursements of this station more nearly approximate, is the imposition of custom duties. It may, perhaps, be considered objectionable to subject one of the stations to this tax, and not the others; but it must be remembered that the inhabitants of Penang themselves have applied to be put on the same footing as Bengal with respect to the import and export of sugar, which if acceded to by government, will necessitate the formation of a preventive service, which will cost 6,000 rupees annually; for double this sum, an efficient custom-house establishment might be maintained; and as the port, if it be declared a non-importing sugar colony, can no longer be considered free, there appears less objection to the imposition of duties than there might be under other circumstances; at all events, something should be done to prevent its continuing a dead weight on the finances of India; and I am altogether unprepared, though I have deeply considered the matter, to propose any other plan.

1840–41.

	Rs.
Imports,	53,48,757
Exports,	55,00,091

Malacca.

11. The local expenses of this place exceed its receipts by 91,178 rupees; inclusive of military and convicts, by 2,38,523 rupees. At this station there is no chance whatever of raising the revenue; the people are all wretchedly poor and miserable, and the place has no trade whatever; the lands are all alienated, except in Nanning, the population of which does not exceed 6,700* souls. It will be entirely useless to expect from any present outlay any future returns; I would therefore recommend that as the present incumbents are absorbed, their places should not be filled up. One principal assistant, on 1,000 rupees per month, with three or four clerks, is all can be required. This officer should, as at present, continue to be a member of the court of judicature, and have in civil cases jurisdiction to any extent, his proceedings to be liable to revision by the governor, as the president of the court, or by the recorder. In criminal cases he should have the power, without a jury, of incarceration for six months, and with a jury, for a period not exceeding two years, and be allowed to entertain offences of the same description as it is proposed that the judge of the contemplated subordinate criminal court in Calcutta should be entrusted with. Cases of a deeper and more aggravated nature must be sent for trial to Singapore. During the year 1841, only 29 suits were filed in the court, the amount in dispute being 15,500 dollars.

1840–41.

	Rs.
Imports,	2,81,855
Exports,	2,46,124

* Males - 3,092
Females - 3,557
6,649

12. I am induced to bring these matters thus minutely to the immediate consideration of the Honourable the President in Council, in consequence of a plan

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that I am aware has been proposed of reducing the emoluments of the principal officers of those establishments very considerably. Whatever reductions are ordered can have but little effect on my position, for I am not likely to remain much longer. I may therefore be considered as having little personal interest in the matter; but the few remarks I have to make may also be considered in consequence to be entitled to more consideration than if otherwise situated.

13. The foregoing data will at once exhibit the importance of the trade of Singapore, the number of ships that annually visit it, and that it carries on a trade with all countries in Europe, as well as with all the neighbouring native states, and that by far more foreign flags are seen in its harbour than in any other in India, and, I trust, convince the government that a gentleman at the head of an establishment of this description is on a perfectly different footing, as regards calls on his hospitality, to a judge and magistrate on the continent of India; and considering that he has to perform a great portion of the judicial duties of the place, as well as those of the executive, I am disposed to think that his time is nearly as fully employed.

14. The government is aware, moreover, that in these stations every article of provision is exorbitantly dear: a Bengal sheep, for instance, costs 10 dollars; common poultry, 3 dollars per dozen; and all other necessaries are on the same scale. Whether, therefore, it will be proper to reduce the salaries of the resident councillors at Singapore and Penang, and the recorder to a salary below what the former at present enjoy, I must leave to the liberal consideration of the government; but I am prepared to add, that if their salaries are reduced below these rates, the incumbents will be entirely unable to live in a manner their positions call on them to do, or even on a par with the principal merchants of the place.

15. The government will be aware that I have been at Singapore from its very infancy, and have seen it rise in 22 years from a desert to a place carrying on an import and export trade to the extent of 5,40,54,823 rupees, and affording during the past year a revenue of 4,67,629 rupees. It is impossible, therefore, that I can be indifferent to its welfare, even when I have ceased to have any official connexion with it; and I therefore venture respectfully, but urgently, to solicit the full consideration of the government to the facts set forth in this paper, in the full hope that no reductions may be made in the salaries of the governor, the resident councillors at Singapore and Penang, or of the recorder, on the occurrence of vacancies.

16. I would also beg to be allowed to remark, that if the salaries of the resident councillors are reduced, the appointments will, on vacancies occurring, be anything but desirable for gentlemen of the Bengal civil service, as it can scarcely be expected under such circumstances that they will be desirous to leave their own presidencies to take office in strange and much more expensive places; and the result will be, that the thriving settlement of Singapore, which is now rapidly rising into importance, and to which the Honourable Court of Directors, and mercantile community of Great Britain and India, attach considerable importance, will fall under the immediate control of the most indifferent of the government servants, or of those who from various causes may be desirous of being as far from the seat of government and the control of their superiors as possible.

I have, &c.

(signed) *S. G. Bonham,*
Governor of Prince of Wales' Island,
Singapore and Malacca.

Singapore,
21 October 1842.

Ordered, that a copy of the foregoing letter, and of the statement therein mentioned, be sent to the Legislative Department for information.

(A true extract.)

(signed) *H. V. Bayley,*
Deputy Secretary to the Government of India.

(A.)

Legis. Cons., 30th December 1842.—No. 28. Enclosure.

STATEMENT of the Proper RECEIPTS and DISBURSEMENTS of *Prince of Wales' Island*, *Singapore*, and *Malacca* for 1841–42, exclusive of Military and Convicts.

	No. 1. Prince of Wales' Island, including Province Wellesley.	No. 2. Singapore.	No. 3. Malacca.	TOTAL.
Receipts:	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.
Amount of excise farms received in 1841–42	1,24,481 4 –	3,19,879 3 1	42,813 15 3	4,87,174 6 4
Amount of quit and ground-rent	35,469 4 8	20,551 14 9	321 4 5	56,342 7 10
Amount of transfer fees in Land-office	574 2 7	530 10 3	314 6 5	1,419 3 3
Amount of land sold on building leases	– – –	74,073 8 8	– – –	74,073 8 8
Amount of fees received from court of judicature	9,982 12 2	14,207 4 3	3,362 8 10	27,552 9 3
Amount of fees received from court of requests	11,624 11 4	8,897 9 7	3,809 11 9	24,337 – 8
Amount of fines and fees received from sheriff, sitting magistrate, and quarter sessions.	832 10 11	583 12 6	126 15 7	1,543 7 –
Amount received for postage	4,336 7 7	10,285 12 5	133 2 –	14,755 6 –
Amount received for local passes, &c. granted to vessels.	1,121 14 3	849 11 11	20 – –	1,991 10 2
Amount received for water supplied from government aqueduct.	713 1 2	– – –	– – –	713 1 2
Amount of rent of government buildings	213 4 11	– – –	– – –	213 4 11
Amount of sale of presents, and old stores sold	3,931 11 7	948 5 7	51 3 9	4,931 4 11
Amount of premium on bills of exchange	3,518 7 1	16,821 7 11	560 12 4	20,900 11 4
Amount of hire of local convicts	– – –	– – –	194 3 6	194 3 6
Amount of agricultural rents	– – –	– – –	3,669 10 –	3,669 10 –
Amount of one-tenth on lands and tin mines	– – –	– – –	5,011 13 4	5,011 13 4
Amount collected on brick-kilns	– – –	– – –	173 7 11	173 7 11
Amount refunded by parties	100 – –	– – –	13 7 6	113 7 6
Amount of duty on timber	751 – 5	– – –	– – –	751 – 5
	1,97,655 12 8	4,67,629 4 11	60,576 10 7	7,25,861 12 2
Excess of disbursements	55,709 1 5	– – –	91,178 14 8	1,46,888 – 1
Co.'s Rs.	2,53,364 14 1	4,67,629 4 11	1,51,755 9 3	8,72,749 12 3

	No. 4. Prince of Wales' Island, including Province Wellesley.	No. 5. Singapore.	No. 6. Malacca.	TOTAL.
Disbursements:	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.
Salary of resident councillor for 1841–42	24,000 – –	24,000 – –	24,000 – –	72,000 – –
Salary of assistant, inclusive of military pay, for 1841–42.	19,429 – –	7,663 8 –	7,200 – –	34,292 8 –
Salary of Mr. G. T. Gotlieb for general duties, for three months.	719 – –	– – –	– – –	719 – –
Salary of resident commissioners' establishment for 1841–42.	3,910 12 –	3,744 – –	3,636 – –	11,290 12 –
Court of judicature establishment for 1841–42	14,712 – –	12,258 – –	8,550 – –	35,520 – –
Sheriff's establishment for 1841–42	4,202 11 –	5,010 – –	3,032 6 –	12,245 1 –
Coroner's establishment for 1841–42	1,379 6 –	1,379 6 –	120 – –	2,878 12 –
Court of request establishment for 1841–42	3,600 – –	2,400 – –	1,800 – –	7,800 – –
Police establishment at Province Wellesley for 1841–42.	10,224 – –	– – –	– – –	10,224 – –

(*continued*)

	No. 4. Prince of Wales' Island, including Province Wellesley.			No. 5. Singapore.			No. 6. Malacca.			TOTAL.		
Disbursements—*continued.*	*Co.'s Rs.*	*a.*	*p.*	*Co.'s Rs.*	*a.*	*p.*	*Co.'s Rs.*	*a.*	*p.*	*Co.'s Rs.*	*a.*	*p.*
Chaplain's salary and establishment for 1841-42	10,757	–	–	9,240	–	–	1,906	7	2	21,903	7	2
Assistant chaplain's salary for 9 ½ months - -	556	7	3	4,750	–	–	-	-	-	5,306	7	3
Surgeon's salary and establishment for 1841-42 -	4,441	4	8	12,090	–	–	-	-	-	16,531	4	8
Assistant surgeon's salary and establishment for two months.	-	-	-	800	–	–	5,554	3	–	6,354	3	–
Post-office establishment for 1841-42 - -	896	10	8	1,200	–	–	456	–	–	2,552	10	8
Import and export establishment for 1841-42 -	2,074	2	8	3,960	–	–	1,278	–	–	7,312	2	8
Land department for 1841-42 - - - -	10,448	5	6	4,857	6	–	2,160	–	–	17,465	11	6
Harbour-master's department and establishment for 1841-42.	3,619	5	4	6,097	8	–	1,056	–	–	10,772	13	4
Rented houses, and persons in charge of ditto, for 1841-42.	1,837	15	2	3,007	14	–	-	-	-	4,845	13	2
Chinese poor-house and pauper hospital for 1841-42.	-	-	-	5,620	1	6	-	-	-	5,620	1	6
Magazine department, exclusive of conductor's salary, for 1841-42.	4,035	8	9	1,854	–	–	1,014	–	–	6,903	8	9
Executive officer's department for 1841-42 -	1,200	–	–	600	–	–	1,200	–	–	3,000	–	–
Signal department for 1841-42 - - - -	752	7	–	540	–	–	240	–	–	1,532	7	–
Political pensions and stipends for 1841-42 -	23,676	15	5	18,860	12	–	-	-	-	42,537	11	5
Local pensions for 1841-42 - - - -	6,955	9	–	2,229	15	–	3,738	12	–	12,924	4	–
Schools for 1841-42 - - - - -	4,740	5	–	5,214	6	–	3,894	–	–	13,848	11	–
Annuities to former landed proprietors for 1841-42	-	-	-	-	-	-	17,354	10	8	17,354	10	8
Tide-gauge establishment for 1841-42 - -	720	–	–	-	-	-	-	-	-	720	–	–
Loss on disbursing salaries at 220 per $ 100 -	8,630	11	8	6,333	15	11	2,803	5	3	17,768	–	10
Contingencies in the several departments, including repairs and erection of buildings, &c., from 1st May to 30th April 1842.	36,031	9	9	70,524	14	2	10,948	1	11	1,17,504	9	10
	2,03,551	2	10	2,14,235	10	7	1,01,941	14	–	5,19,728	11	5
Add,												
One-third of the net salary of the governor establishment for 12 months, including passage in the Helen, and batta to clerk and peons.	13,824	13	7	13,824	13	7	13,824	13	7	41,474	8	9
One-third of the net salary of the recorder and establishment for 12 months.	15,001	13	4	15,001	13	4	15,001	13	4	45,005	8	–
One-third of the net salary of the registrar of the court of judicature for 12 months.	5,973	5	4	5,973	5	4	5,973	5	4	17,920	–	–
One-third of the expenses incurred on account of the steamer Diana, three gun-boats, superintendent, and contingencies, for 12 months.	15,013	11	–	15,013	11	–	15,013	11	–	45,041	1	–
	2,53,364	14	1	2,64,049	5	10	1,51,755	9	3	6,69,169	13	2
Excess of receipts at - - - - -	-	-	-	2,03,579	15	1	-	-	-	2,03,579	15	1
Co.'s Rs.	2,53,364	14	1	4,67,629	4	11	1,51,755	9	3	8,72,749	12	3

	Co.'s Rs.	*a.*	*p.*
Memorandam.—Receipts of the incorporated settlements - - -	7,25,861	12	2
Disbursements - ditto - ditto - - - -	6,69,169	13	2
Excess of Receipts - - - *Co.'s Rs.*	56,691	15	–

(B.)

STATEMENT of Expenses incurred for the Military serving at *Prince of Wales' Island*, *Singapore*, and *Malacca*, from 1st May 1841 to 30th April 1842.

	No. 7. Prince of Wales' Island, including Province Wellesley.	No. 8. Singapore.	No. 9. Malacca.	TOTAL.
	Co.'s Rs. a. p.	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.
Amount advanced to Madras troops	1,44,118 4 6	1,07,693 10 –	59,735 3 –	3,11,547 1 6
*Paid at Madras on account of ditto	76,257 8 –	93,318 8 –	*52,572 – –	2,22,148 – –
*Provisions issued to troops (estimated value)	32,333 6 11	25,910 13 7.	*17,566 6 8	75,810 11 2
Military stores issued to ditto (unknown).				
Periodical relief of troops to and from Madras (unknown).				
Paid sundry contingencies	2,633 10 7	2,444 12 –	3,502 6 4	8,580 12 11
Salary of deputy commissaries and conductors	5,901 – –	2,338 8 –	2,698 8 –	10,938 – –
Military pay as assistant	730 8 –	2,508 15 –	- - -	3,239 7 –
Salary to the Rev. Mr. Bucks for the spiritual care of the European professors of the Roman-catholic faith.	300 – –	- - -	- - -	300 – –
Invalid sepoy pensioners	- - -	- - -	274 1 –	274 1 –
Co.'s Rs.	2,62,274 6 –	2,34,215 2 7	1,36,348 9 –	6,32,838 1 7

* Estimated as in the year 1840–41, the 39th Regiment having proceeded to China before this statement was completed.

(C.)

STATEMENT of Expenses incurred for Continental Convicts at *Prince of Wales' Island*, *Singapore*, and *Malacca*, from 1st May to 30th April 1842.

	No. 10. Prince of Wales' Island, including Province Wellesley.	No. 11. Singapore.	No. 12. Malacca.	TOTAL.
	Co.'s Rs. a. p.	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.	*Co.'s Rs.* a. p.
Establishment	5,760 – –	7,392 – –	2,009 – –	15,161 – –
Rations, including money allowance	25,075 6 –	35,754 2 6	8,200 12 9	69,030 5 3
Clothing	1,921 10 6	3,541 15 2	89 1 –	5,552 10 8
Contingencies	2,659 4 1	3,622 11 7	696 13 1	6,978 12 9
Passage from Bombay	- - -	880 – –	- - -	880 – –
	35,416 4 7	51,190 13 3	10,995 10 10	97,602 12 8
Deduct:				
Received hire of continental convicts	4,344 11 2	4,573 8 2	- - -	8,918 3 4
Co.'s Rs.	31,071 9 5	46,617 5 1	10,995 10 10	88,684 9 4

ABSTRACT STATEMENT of the REVENUE and CHARGES of *Prince of Wales' Island*, *Singapore*, and *Malacca*, for the Official Year 1841-42.

		Co.'s Rs. a. p.	Co.'s Rs. a. p.
Prince of Wales' Island:			
Local charges, as per statement - -	(A.) No. 4	2,53,364 14 1	
Expenses of troops - ditto - - -	(B.) — 7	2,62,274 6 —	
Expenses of continental convicts, ditto	(C.) — 10	31,071 9 5	
		5,46,710 13 6	
Deduct,			
Revenue at Prince of Wales' Island	(A.) — 1	1,97,655 12 8	
Deficit at Prince of Wales' Island			3,49,055 — 10
Singapore:			
Local charges, as per statement - -	(A.) No. 5	2,64,049 5 10	
Expenses of troops - ditto - - -	(B.) — 8	2,34,215 2 7	
Expenses of continental convicts, ditto	(C.) — 11	46,617 5 1	
		5,44,881 13 6	
Deduct,			
Revenue at Singapore - - - - -	(A.) — 2	4,67,629 4 11	
Deficit at Singapore -			77,252 8 7
Malacca:			
Local charges, as per statement - -	(A.) No. 6	1,51,755 9 3	
Expenses of troops - ditto - - -	(B.) — 9	1,36,348 9 —	
Expenses of continental convicts, ditto	(C.) — 12	10,995 10 10	
		2,99,099 13 1	
Deduct,			
Revenue at Malacca - - - - -	(A.) — 3	60,576 10 7	
Deficit at Malacca -			2,38,523 2 6
TOTAL Deficit at the Settlements of Prince of Wales' Island, Singapore, and Malacca, in the year 1841-42 - -		- - Co.'s Rs.	6,64,830 11 11

COMPARATIVE STATEMENT of the REVENUE and CHARGE of *Prince of Wales' Island*, *Singapore*, and *Malacca*, between the Official Years 1840-41, 1841-42.

	1840-41.	1841-42.	INCREASE.	DECREASE.
Local charges of the three stations - - -	5,97,857 9 7	6,69,169 13 2	71,312 3 7	—
Charges on account of troops - - - -	6,79,364 12 11	6,32,838 1 7	- - -	46,526 11 4
Charges on account of continental convicts -	93,162 12 3	88,684 9 4	- - -	4,478 2 11
	13,70,385 2 9	13,90,692 8 1	71,312 3 7	51,004 14 3
	—	13,70,385 2 9	51,004 14 3	—
Deduct,	—	20,307 5 4	20,307 5 4	—
Revenue at the three stations - - - -	5,76,407 6 10	7,25,861 12 2	1,49,454 5 4	—
	5,76,407 6 10	7,05,554 6 10	1,29,147 — —	—
	—	5,76,407 6 10	—	—
Decrease of Charges in 1841-42, after deducting the Revenue - - - -	- - -	1,29,147 — —	1,29,147 — —	—

(signed) *S. G. Bonham*,
Governor of Prince of Wales' Island, Singapore, and Malacca.

(A true copy.)

(signed) *H. V. Bayley*,
Deputy Secretary to the Government of India.

No. 3.
Recorder's Court: Registration of Conveyances.

Legis. Cons. 30 Dec. 1842. No. 29.

AN ACT for the Administration of Justice within the Straits Settlements.

I. WHEREAS it is expedient that "the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca," established by charter or letters patent of his Majesty King George the Fourth, under date the 27th November, A. D. 1826, and "the courts for the recovery of small debts," established in the said settlements under authority of the said charter, should be abolished, and that other provision should be made for the administration of justice in the said settlements, and whereas the Governor-general of India in Council has obtained the sanction of the Court of Directors of the East India Company to the abolition of the said Court of Judicature;—

It is hereby enacted, that the jurisdiction of "the Court of Judicature of Prince of Wales' Island, Singapore and Malacca," established by the said charter, and all powers and authorities thereby granted to or vested in the said court, and the jurisdiction of the courts for the recovery of small debts, established in the said settlements under authority of the said charter, shall cease and determine on the 31st day of ——

II. And it is hereby enacted, that after the 31st of —— A. D. —— the entire administration of justice, civil and criminal, within the said settlements, except in respect of causes and matters and crimes and offences falling within the jurisdiction of courts of admiralty and vice-admiralty, and military courts, shall be vested exclusively in the courts constituted by this Act.

III. And it is hereby enacted, that on the 1st day of —— A. D. —— a court of record for the administration of civil and criminal justice shall be established in the settlement of Singapore, which shall consist of three or more judges, and a court of record similarly constituted in each of the settlements of Prince of Wales' Island, and Malacca; and the said courts shall be called respectively, "The General Court of Singapore," "The General Court of Prince of Wales' Island," and "The General Court of Malacca."

IV. And it is hereby enacted, that whenever in this Act any of the said settlements shall be mentioned, all places subordinate or annexed thereto shall be understood to be included.

V. And it is hereby enacted, that one of the judges of the General Court of Singapore shall be also appointed a judge of the general courts of Prince of Wales' Island and Malacca, and shall be called the circuit judge, and that such judge shall reside principally at Singapore, but shall visit each of the settlements of Prince of Wales' Island and Malacca three times in every year, and shall sit in court from time to time at each place in succession, until he has disposed of the business that may be waiting for him, or may come before him during his visit.

VI. And it is hereby enacted, that such circuit judge shall be a barrister of the English or Irish bar of not less than five years standing, or an advocate of the Scottish bar of not less than five years standing; that he shall be appointed by the Governor-general of India in Council; that he shall receive such salary as the Governor-general of India in Council shall deem fitting; and that he shall not hold any other office, place, or employment, or be engaged in or carry on any trade, traffic, or business whatsoever, on pain that the acceptance of any such other office, place, or employment, or the engaging in or carrying on any such trade, traffic, or business, shall be in law an avoidance of his office.

VII. And it is hereby enacted, that the number of other judges to be appointed to the general court in each of the said settlements, who shall be called resident judges of such settlement, and shall be distinguished as first, second, and so on, shall be determined by the Governor-general of India in Council, and may be reduced or increased from time to time as to the said Governor-general in Council may seem meet.

VIII. And it is hereby enacted, that such resident judges shall be appointed by the Governor of Bengal; and that it shall be competent to him to appoint either such professional persons as aforesaid, or persons being executive officers of government, to be such judges.

IX. And it is hereby enacted, that the salary to be assigned to every such judge shall be determined by the Governor-general of India in Council, regard being had to his qualifications, and if he holds any other office under government, to the salary of that office.

 X. And

No. 3.
Recorder's Court: Registration of Conveyances.

X. And it is hereby enacted, that every judge appointed as aforesaid, before he shall be capable of exercising the office of judge or magistrate under this Act, shall take in open court, in such manner as shall be directed by the Governor of Bengal, an oath, or shall make a solemn declaration as shall be ordered by the said Governor of Bengal, that he will, to the best of his knowledge, skill, and judgment, duly execute the office of judge or magistrate, and impartially administer justice in every cause, matter, or thing, which shall come before him; of which oath or declaration a record shall forthwith be made.

XI. And it is hereby enacted, that every judge of the said courts shall have and use a seal, with his official designation inscribed upon it; and that all notices, writs, summonses, precepts, rules, orders, and other mandatory process to be used, issued, or awarded by such judge, shall be sealed with such seal, and shall be signed by such judge.

XII. And it is hereby enacted, that a fit and proper person shall be appointed by each of the said general courts to be sheriff of the settlement, subject to the jurisdiction of such court, who shall continue in such office until another person shall be appointed by the same authority to succeed him therein: Provided, that no person shall be appointed sheriff of any of the said settlements, and that no person having been duly appointed sheriff shall be removed from office, without the express consent of all the judges of such settlement.

XIII. And it is hereby enacted, that the sheriff of every settlement appointed as aforesaid shall execute all the writs, summonses, rules, orders, warrants, commands, and process of the several judges of the general court of the settlement, and make returns of the same, together with the manner of the execution thereof, to the judge who shall have issued the same, and shall receive and detain in prison all such persons as shall be committed to his custody by any of the said judges, or any other person having competent authority so to do; and to do all such acts, matters, and things, and perform all such duties, as nearly as circumstances shall admit or require, as are or ought to be done and performed by the sheriff of any shire or county in England.

XIV. Provided, that the sheriff of Prince of Wales' Island shall appoint a deputy, for whom he shall be responsible, to execute the process issued by the resident judge in Province Wellesley.

XV. And it is hereby enacted, that whenever any of the judges of any of the said courts shall direct and award any process against the said sheriff, or award any process in any cause, matter or thing, wherein the said sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge which would be allowed against any sheriff in England, cannot, or ought not by law to execute the same, in every such case such judge shall name and appoint some other fit person to execute and return the same; and the said process shall be directed to the said person so named for that purpose, and the cause of such special proceedings shall be suggested and entered on the records of the said court.

XVI. And it is hereby enacted, that the several judges of the said courts shall have such jurisdiction and authority as the Court of Queen's Bench and the justices thereof, and also as the High Court of Chancery, and the Courts of Common Pleas and Exchequer respectively, and the several judges, justices, and barons thereof, respectively have and may lawfully exercise, within that part of the United Kingdom called England, in all civil and criminal actions and suits, and in matters concerning the revenue; and that the said judges severally shall have and exercise the jurisdiction exercised by the ecclesiastical courts in England, so far as the several religions, manners, and customs of the inhabitants of the said settlements will admit.

XVII. And it is hereby enacted, that each of the said courts within the settlement for which it is constituted, shall have full power to hear, examine, try, and determine, in manner hereinafter mentioned, all actions and suits which shall or may arise, or happen or be brought or promoted upon or concerning any trespasses or injuries, of what nature or kind soever, or any debts, duties, demands, interests, or concerns, of what nature or kind soever, or any rights, titles, claims or demands of, in, or to any houses, lands, or other things, real or personal, within such settlements, or touching the possession or any interest or lien in or upon the same, and all pleas, real, personal, or mixed, the causes of which shall or may hereafter arise, accrue, and grow, or shall have heretofore arisen, accrued, and grown, against the East India Company, and against any persons who shall be

No. 3.
Recorder's Court: Registration of Conveyances.

be resident within such settlement, or who shall have resided there, or who shall have any debts, effects, or estate, real or personal, within the same, and against the executors and administrators of such persons.

XVIII. Provided always, that it shall not be competent to such court to try or determine any suit or action against any person who shall never have been resident in the said settlement, nor against any person then resident in Great Britain or Ireland, unless such suit or action against such person so then resident in Great Britain or Ireland shall be commenced within two years after the cause of action arose, and the sum to be recovered be not of greater value than 12,000 dollars.

XIX. Provided always, that nothing in this Act shall extend or be construed to extend to subject the person of the governor or resident, or any of the councillors of the said settlements, or the person of any judge of Singapore, Prince of Wales' Island, and Malacca, to be arrested or imprisoned in any civil suit, action, or proceeding in any of the said courts.

XX. And it is hereby enacted, that the process and the practice of the said courts shall be regulated according to such forms and rules as may be established by the judges of the said courts, subject to the approval and confirmation of the Governor-general in Council, as are now used in the aforesaid Court of Judicature established by charter, or as near thereto as circumstances will permit; and that all laws now in force, and all provisions of the said charter for regulating and for the better execution of the process and practice of the aforesaid Court of Judicature, shall be applicable to the process and practice of the courts established by this Act.

XXI. Clause 1. And it is hereby enacted, that the plaints received in the said courts shall be disposed of as follows:

Clause 2. In the court of Singapore, when the circuit judge is at the settlement, on every day on which any of the judges shall sit for the purpose of receiving plaints, all the plaints received shall be laid before the circuit judge, who shall distribute them for trial and decision among all the judges, including himself.

Clause 3. In distributing the plaints the circuit judge shall endeavour to give to each judge a share of them proportioned to the time which he is able to devote to judicial business, and those kinds of suits which he thinks him best qualified to decide, and in which he shall have no personal interest, and have no connection with or relation to the parties.

Clause 4. Provided that the circuit judge shall reserve to himself all cases involving difficult or doubtful points of law, and questions of importance which have not previously been determined; all suits in which government is a party; and all suits in which the amount involves a dispute exceeding 10,000 rupees, wherein an appeal may be preferred to the Privy Council under the rules passed by Her Majesty in Council of date the 10th April 1838. And that all suits in which he is himself a party, or related to or connected with a party, or is anywise interested, shall be assigned to a resident judge.

Clause 5. In the Court of Singapore, in the absence of the circuit judge, and at all times in the Courts of Prince of Wales' Island and Malacca, all the plaints received shall be laid before the first resident judge, who shall distribute them in the manner directed in the 3d and 4th clauses of this section.

Clause 6. Provided that the circuit judge shall have power to call up and place on his own file any causes assigned to other judges which he shall deem it proper to hear and decide himself, and to transfer to other judges any causes assigned to himself which he shall think not to be of a nature to require his attention.

XXII. And it is hereby enacted, that one of the resident judges of the Court of Prince of Wales' Island shall sit separately in Province Wellesley, and shall receive all plaints that may be preferred to him against persons residing in the said province, of which he shall reserve to himself all such as, according to the arrangement for the distribution of causes which shall be observed in the said court, would fall to him if he was sitting in it, and shall remit all others to the first resident judge, to be disposed of as if they had been preferred in the said court.

XXIII. And it is hereby enacted, that every judge to whom a plaint is assigned for trial, shall immediately place it on his file, and shall direct process to be issued, and proceed with the cause in such manner and according to such rules and forms of practice as may be established by the judges of the said court, under the approval and confirmation of the Governor-general in Council.

 XXIV. And

No. 3.
Recorder's Court: Registration of Conveyances.

XXIV. And it is hereby enacted, that in the absence of the circuit judge it shall be competent to the first resident judge of any of the courts, in any suit on the file of the chief judge in such court, to take all steps which cannot be delayed without risk of injustice.

XXV. And it is hereby enacted, that every judge in each of the said courts shall be empowered to administer to witnesses and others whom he may see occasion to examine in any suit or proceeding before him, proper oaths and affirmations, that is to say, to such persons as profess the Christian religion, the oath upon the Holy Evangelists of God; and to Quakers, Moravians, and others, who are exempted by law from taking oaths in the courts in England, the affirmation according to the form used in England for that purpose; and to Hindoos and Mahomedans the affirmation prescribed by Act No. V. of 1840, of the Governor-general of India in Council, and to others such oath in such manner and form as he shall deem most binding on their consciences respectively. And the depositions having been reduced into writing, and subscribed by the judge, shall be filed of record; and in case any person so cited shall refuse or wilfully neglect to appear and be sworn, or, being Quakers, Moravians, or others exempted as aforesaid, to affirm and be examined, the judge shall be empowered to punish such persons so refusing or wilfully neglecting, as for a contempt, by fine and imprisonment.

XXVI. And it is hereby enacted, that no person shall be excluded from giving evidence in any suit or other proceeding in any of the said civil courts by reason of his being interested in the subject of litigation, or in the merits of the suit.

XXVII. And it is hereby enacted, that all fees and fines levied under this Act by each of the said courts shall be paid monthly into the treasury of the East India Company for the settlement at which such court is held.

XXVIII. And it is hereby enacted, that every judge of each of the said courts shall be empowered to award and issue a writ or writs or other process of execution directed to the sheriff, commanding him to seize, and deliver the possession of the houses, lands, or other things recovered in and by judgments, sentences or decrees, of himself or his predecessor, or to levy any sum of money which shall be so recovered, or any costs which shall be so awarded, as the case may require, by seizing and selling so much of the houses, lands, debts, or other effects, real and personal, of the party or parties against whom such writ or writs shall be awarded, as will be sufficient to answer and satisfy the said judgments, or to take and imprison the body or bodies of such party or parties until he, she, or they, shall make such satisfaction; or to do both, as the case may require. And it is hereby enacted and appointed, that the several debts to be seized as aforesaid shall from the time the same shall be extended and returned into the said court, be paid and payable in such manner and form as the judge in each case shall appoint, and no other; and such payment, and no other, shall from thenceforth be an absolute and effective discharge for the said debts and every of them respectively.

XXIX. And it is hereby enacted, that all money, jewels, precious stones and securities of the suitors of each of the said courts, which shall be ordered into court, or to be paid, delivered, or deposited for safe custody, shall be paid, delivered into, or deposited in the public treasury of the East India Company at the settlement at which the court shall be held, to be kept and deposited with the cash, precious stones, jewels, and effects of the said company, subject to such orders and directions in every case as the judge to whose province it belongs shall from time to time think fit to make concerning the same, for the benefit of the suitors. And each judge shall from time to time order and direct any money belonging to suitors of the court in cases within his province, to be invested at interest, or without interest, for the purpose of remittance to any place without the said settlement as there may be occasion, for the use and benefit of the parties respectively entitled thereto, on any bills, bonds, or securities of the said Company, or any other bills, bonds, or securities as such court shall see fit to order and direct. And all executors, administrators, guardians, and trustees whatsoever acting with respect to such investments at interest or for remittance, under the directions of judges of the courts, shall be indemnified against all risk or loss to be occasioned thereby.

XXX. And it is hereby enacted, that the treasurer of the said company at each of the said settlements shall be and be called the accountant of the general court of such settlement, and shall act, perform, and do, all matters and things necessary to carry into execution the orders of the several judges of the said court, relating to the payment or delivery, or depositing of the suitors' money, jewels, precious stones and securities, into or in the said treasury, and taking the same out again,

and

and investing the money of the suitors at interest or for remittance, and keeping the accounts thereof, and for doing such other matters relating thereto under such rules, methods, and directions, as shall from time to time be made and passed by the several judges of the said court.

XXXI. And it is hereby enacted, that in case any person shall have any action or suit against the said East India Company, such person shall be at liberty to proceed therein in like manner as hereinbefore mentioned; and it shall and may be lawful for the chief judge in any such suit or action duly brought in any of the said courts to issue a summons for the appearance of the said Company, to be served upon the governor or president, and the resident councillor of the settlement in which the cause of action or suit shall have arisen, and thereupon the said governor or president, and such resident councillor as aforesaid, shall appoint such person or persons to appear and act for the said Company as they shall see fit, and such person or persons shall be admitted to an answer and defend such suit in the name and for and on the behalf of the said Company. And the said chief judge shall be empowered to try, hear, and determine all such actions and suits in the said courts against the said Company, and to give judgment and costs, and award execution, and do and order all such other matters and things therein, as far as the case will admit, in such manner as herein is mentioned, as to any person or persons whomsoever, subject, nevertheless, to such right of appeal by either party as herein is mentioned. And in like manner, if the said Company shall have any action or suit against any person or persons, it shall and may be lawful to and for the said governor, or president and council, or any two of them, the governor or president being always one, to authorize any person or persons for and on behalf of the said Company, and in their name, to make complaint thereof in writing to the court to whose jurisdiction the matter belongs, and the chief judge sitting in such court shall proceed therein, and shall hear and determine the same as in other cases; and in case judgment or sentence shall be given against the said Company, shall award costs, to be levied upon the goods and effects of the said Company as they shall see occasion, subject, nevertheless, to such appeal by either party as herein is mentioned.

XXXII. And it is hereby enacted, that all causes, suits and business of ecclesiastical cognizance which shall be brought before the said courts shall be distributed among the judges in the manner directed in this Act; and that the manner of proceeding therein shall be as near as may be in conformity with the rules hereinbefore prescribed for all other suits.

XXXIII. And it is hereby enacted, that the circuit judge sitting in the general court of any of the said settlements, and in his absence the first resident judge, shall have full power to grant probates under his official seal of the last wills and testaments of all or any of the inhabitants of the said settlements, and of all other persons who shall die and leave personal effects within the jurisdiction of such court, and to commit letters of administration under his official seal, of the goods, chattels, credits, and all other effects whatsoever within the said jurisdiction of the persons aforesaid who shall die intestate, or who shall not have named an executor resident within the said settlement, or where the executor being duly cited, shall not appear and sue forth such probate; annexing the will to the said letters of administration, when such persons shall have left a will without naming any executor, or any person for executor, who shall then be alive and resident within the said settlements, and who, being duly cited thereunto, will not appear and sue forth a probate thereof; and to sequester the goods and chattels, credits, and other effects whatsoever, of such persons so dying, in cases allowed by law, as the same is and may now be used in the diocese of London; and to demand, require, take, hear, examine and allow, and if occasion require, to disallow and reject, the account of them in such manner and form as is now used or may be used in the said diocese of London, and to do all other things whatsoever needful and necessary in that behalf.

XXXIV. Provided always, that the said chief or other judge in such cases as aforesaid, where letters of administrations shall be committed with the will annexed for want of an executor appearing in due time to sue forth the probate, shall reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor or executors whenever he or they shall duly appear and sue forth the same; and the chief or other judge shall grant and commit such letters of administration to any one or more of the lawful next of kin of such person so dying as aforesaid, and being then resident

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resident within any of the said settlements, and being of the age of 21 years; and in case no such person shall then be residing within any of the said settlements, or being duly cited, shall not appear and pray the same, to any competent officer of the said court, or to such person or persons, whether creditor or creditors or not of the deceased person, as the chief or other judge shall see fit.

XXXV. Provided that probates of wills and letters of administration to be granted by the said chief or other judge shall be limited to such money, goods, chattels and effects, as the deceased person shall be entitled to within the jurisdiction of the said court, except in the cases specified in Section XIX.

XXXVI. And it is hereby further enacted, that every person to whom such letters of administration shall be committed shall, before the granting thereof, give sufficient security by bond, to be entered into to the said Company for the payment of a competent sum of money, with one, two, or more able securities, respect being had, in the sum therein to be contained, and in the ability of the sureties, to the value of the estate, credits, and effects of the deceased, which bond, if administration shall be granted to an officer of the said court, shall be deposited in the public treasury of the said settlement; and if granted to any other person or persons, shall be deposited in the said court among the records thereof, and there safely kept, and a copy thereof shall be also recorded among the proceedings of the said court.

XXXVII. And the condition of the said bond shall be to the following effect: that if the above bounden administrator of the " goods, chattels, and effects of the deceased do make, or cause to be made, a true and perfect inventory of all and singular the goods, credits, and effects of the said deceased which have or shall come to the hands, possession, or knowledge of him, the said administrator, or the hands or possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited, into the general court (of Singapore, Prince of Wales' Island or Malacca, as the case may be), at or before a day therein to be specified; and the same goods, chattels, credits, and effects, and all other the goods, chattels, credits, and effects of the deceased at the time of his death, or which at any time afterwards shall come to the hands or possession of such administrator, or to the hands or possession of any other person or persons for him, shall well and truly administer according to law, and further shall make, or cause to be made, a true and just account of his said administration at or before a time therein to be specified, and afterwards from time to time, as he, she, or they shall be lawfully required; and all the rest and residue of the said goods, chattels, credits, and effects which shall be found from time to time remaining upon the said administration accounts, the same being first examined and allowed of by the said chief or other judge sitting in the said court, shall and do pay and dispose of in a due course of administration, or in such manner as the said court shall direct, then this obligation to be void and of non-effect, or else to remain in full force and virtue." And in case it shall be necessary to put such bond in suit, for the sake of obtaining the effect thereof, for the benefit of such person or persons as shall appear to the said chief or other judge to be interested therein, such person or persons from time to time giving satisfactory security for paying all such costs as shall arise from the said suit, or any part thereof, such person or persons shall, by order of the said chief or other judge, be allowed to sue the same in the name of the said Company; and the said bond shall not be sued in any other manner; and the said chief or other judge shall be empowered to order that such bond as aforesaid shall be put in suit in the name of the said Company.

XXXVIII. And it is hereby enacted, that when probates of wills and letters of administration shall be granted as aforesaid, certain periods shall be fixed within which the persons to whom they shall be granted shall from time to time, until the effects of the deceased persons shall be fully administered, pass their accounts relating thereto before the circuit or other judge in the said court; and in case the effects of the deceased shall not be fully administered within the time for that purpose to be fixed, then or at any earlier time, if the said chief or other judge shall see fit so to direct, the person or persons to whom such probate or administration shall be granted shall pay and deposit the balance of money belonging to the estate of the deceased then in his, her, or their hands, and all money which shall afterwards come into his, her, or their hands, and also all precious stones, jewels, bonds, bills, and securities belonging to the estate of the deceased, into and in the treasury of the said Company, in the name of the treasurer,

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surer, as accountant of the court, to abide the orders of the said circuit or other judge, or shall otherwise dispose of such money, goods, chattels, and securities, as the said chief or other judge shall direct: And the said circuit or other judge shall from time to time make such order as shall be just for the due administration of such assets, and for the payment or remittance thereof, or any part thereof, as occasion shall require, to or for the use of any person or persons, whether resident or not resident in the said settlement, who may be entitled thereto, or any part thereof, as creditors, legatees, or next of kin, or by any other right or title whatsoever: And it shall be lawful for the said chief or other judge to allow to any executor or administrator of the effects of any deceased person or persons (except as herein mentioned) such commission or per-centage out of his, her, or their assets as shall be just and reasonable, for their pains and trouble therein.

XXXIX. Provided always, that no allowance whatever shall be made for the pains and trouble of any executor or administrator who shall neglect to pass his accounts at such time, or to dispose of any money, goods, chattels, or securities with which he shall be chargeable, in such manner as, in pursuance of any general or special rule or order of the said court, shall be requisite: And, moreover, every executor or administrator so neglecting to pass his accounts, or to dispose of any such money, goods, chattels, or securities with which he shall be charged, shall be charged with interest at the rate to be then current within the said settlement, for such sum and sums of money as from time to time shall have been in his hands, whether he shall or shall not make interest thereof.

XL. And it is hereby enacted, that in the cases of persons dying in any of the said settlements, and leaving personal effects in more than one of the settlements, applications for probate or letters of administration shall be made to the chief judge only whenever he shall be holding a court at any of the settlements in which such property may be; and probates and letters of administration granted by the chief judge in such cases shall have force in respect of all money, goods, chattels, and effects which the deceased was entitled to in all or any of such settlements.

XLI. Provided, that in the absence of the circuit judge, the first resident judge of each of such settlements may take order for securing the property left therein by the deceased, until probate or letters of administration shall be issued by the circuit judge.

XLII. And it is hereby enacted, that the chief judge, and, in his absence, the first resident judge of each of the said courts, shall have authority to appoint guardians and keepers for infants and their estates within the jurisdiction of such court, according to the order and course observed in England, and also guardians and keepers of the persons and estates of natural fools, and of such as are or shall be deprived of their understanding or reason, so as to be unable to govern themselves and their estates, and in such cases to inquire, hear, and determine, by inspection of the person, or such other ways and means by which the truth may be best discovered and known.

XLIII. Provided, that when the estates of such incapacitated persons are situated in more than one of the said settlements, the appointment of keepers of such estates shall be made by the chief judge only; but the first resident judge in every such settlement shall take order intermediately for the security thereof.

XLIV. Clause 1. And it is hereby enacted, that appeals from the decrees made by the said courts in original suits shall be allowed under the following rules and provisions.

Clause 2. In every suit determined by any resident judge, an application may be made for a new trial to the circuit judge upon points of law. If a new trial be granted, it shall take place before the circuit judge and the judge who originally tried the case; and if any difference of opinion shall arise between the judges upon such new trial, the case shall be decided according to the opinion of the circuit judge, provided that the judge who originally tried the case shall be at liberty to record his opinion and reasons among the proceedings.

Clause 3. Any party desiring to apply for a new trial under this section, shall present a petition to the judge to whom the appeal lies, in person or by an agent, within one month from the date when the decision to which it relates was passed.

Clause 4. Provided that such appeal shall be admissible, at the discretion of the appeal judge, at any time between one month and three months from such date, upon good and substantial cause being shown for such delay.

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XLV. Clause 1. And it is hereby enacted, that a special appeal shall lie to Her Majesty's Supreme Court at Calcutta from decisions for the recovery of property or money exceeding in value or amount 5,000 rupees, passed by the circuit judge and by the first resident judges of the said courts respectively, upon appeals heard by them under this Act, which shall appear to be inconsistent with the law applicable to the case, or with some usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice, upon which there may be reasonable doubts, under the following rules.

Clause 2. An application for a special appeal shall be presented to the court which passed the decree complained of, within the time limited for the presentation of regular appeals.

Clause 3. Every petition for a special appeal shall be accompanied with copies of the several decrees passed in the case; and the petition shall state precisely the point or points of law, usage, or practice in regard to which the decree of the first appellate court is impugned.

Clause 4. In every case of special appeal admitted as aforesaid, Her Majesty's Supreme Court at Calcutta shall determine the point or points certified as above directed, and no other point or part of the case whatever.

Clause 5. And it is hereby provided, with respect to both regular and special appeals to Her Majesty's Supreme Court at Calcutta, that when the petition of appeal shall be presented after the term of one month from the date of the decree, but within the term of three months, the lower court shall receive the petition, and, in forwarding it, shall express an opinion upon the causes assigned for the delay.

XLVI. Clause 1. And it is hereby enacted, that criminal justice shall be administered by the courts hereby established after the following manner.

Clause 2. The said circuit judge shall from time to time hold a court of oyer and terminer and gaol delivery in and for each of the said settlements, and shall hear and determine, by the oaths or affirmations of a jury of good and sufficient men, or of the major part thereof, all treasons, murders, and other crimes done or committed within such settlement, subject by law to the punishment of death, transportation, or imprisonment for life or 14 years, or any longer term, without presentment or indictment by a grand jury; provided that a grand jury shall be summoned to attend every such court of oyer and terminer, and shall have power to make such presentments as have hitherto been made in the Court of Judicature established by charter in the said settlements, and as they may deem it expedient to make; provided also, that the persons who may be summoned on grand juries shall be eligible to serve also upon the petit juries to be held before such court of oyer and terminer.

Clause 3. And the first resident judge of each settlement shall hold a court so often as there may be occasion for the trial of offences subject to a punishment less than any of the punishments aforesaid, and shall proceed without any presentment or indictment by a grand jury, but with a petit jury consisting of six persons.

Clause 4. And when, in any case under trial by the first resident judge of any settlement, it shall appear by the evidence that the crime committed is liable to a sentence which can be passed by the circuit judge only, the said judge shall quash the proceedings, and shall order the case to be reserved for trial by the circuit judge.

Clause 5. Likewise in any case committed for trial before the first resident judge, if it shall appear on a perusal of the proceedings before the magistrate that the case is one which ought to be tried by the circuit judge, he shall order the case to be reserved for trial by him.

Clause 6. And in any case tried by the first resident judge of any settlement, in which he has found the accused guilty, if a doubtful point of law is involved in the case, it shall be competent to such judge to refer the point for the opinion of the circuit judge, and he shall pass sentence according to the opinion delivered by the chief judge on such reference.

Clause 7. And the circuit judge, and other judges aforesaid, respectively, shall from time to time, as there may be occasion, issue their warrant or precept to the sheriff of the settlement, commanding him to summon a convenient number, to be therein specified, of the inhabitants or persons commorant at the settlement, to serve as jurors on the trial of all persons charged with crimes to be tried by a jury; and

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and if any person or persons summoned to serve as jurors aforesaid shall refuse or neglect to attend according to such summons, or to be sworn, or to make the affirmation required of them, or shall make other default, the said circuit judge, and other judges respectively, shall be empowered to punish such contempt by fine and imprisonment for a reasonable time, to be limited, or by both. And the said circuit judge and other judges shall be empowered, in like manner and under the like penalties, to cause all such witnesses as justice shall require to be summoned, and to administer to them, and each of them, the like oaths and affirmations as may be administered to witnesses in civil suits under this Act, and to proceed to hear, try, and determine the crimes and offences upon which persons are charged before them, and to give judgment thereupon, and to award execution thereof, and in all respects, except in so far as it is otherwise provided by this Act, to administer criminal justice in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as the courts of oyer and terminer do or may in England, due attention being had to the several religions, manners, and usages of the native inhabitants.

Clause 8. And the second resident judge of each of the said settlements shall be magistrate and superintendent of police and coroner, in and for the said settlement; and the resident judge in Province Wellesley shall be magistrate and superintendent of police and coroner in and for the said province.

Clause 9. And such magistrate shall be vested with all the powers of justices of the peace in England, for the purpose of keeping the peace, and for pursuing and arresting and bringing offenders to justice, and for doing all other acts which, by virtue of any law or statute now in force in the said settlements, may lawfully be done by a justice of the peace therein.

Clause 10. And such magistrate as coroner shall exercise the like powers, authorities, and jurisdictions, as by law may be exercised by coroners elected for any county or place in England; provided, that he may hold an inquest with a jury consisting of any number of persons not less than three.

Clause 11. And such magistrate shall hold a preliminary investigation in cases of a nature to be tried by the circuit judge, or by the first resident judge, and shall commit the persons accused, or hold them to bail to take their trial in due course, or shall discharge them; and shall hold a court from time to time as may be necessary for the trial and punishment by himself, in such summary way as may be most consistent with the attainment of substantial justice, of crimes, offences and misdemeanors subject to a punishment not exceeding ordinary imprisonment for six months, or a fine of 200 rupees, and shall have power, in like manner and under the like penalties as aforesaid, to summon witnesses and to administer oaths and affirmations to them, and to punish contempts.

Clause 12. And the Governor of Bengal is hereby empowered to grant commissions or to authorize the governor or the resident councillor in any of the said settlements to grant commissions to any servants of the East India Company or other inhabitants of the settlement, to assist the said magistrate in his executive functions, and to be his deputies in the office of coroner, and therein to exercise the same powers as he is hereby authorized to exercise, in concurrence with him and under his direction.

Clause 13. And the Governor of Bengal shall give such orders as he shall deem meet for the appointment of constables and subordinate peace officers to perform the duties usually performed by such officers in England, under the direction and control of the said magistrate.

Clause 14. And the said magistrates and assistants to magistrates, and all constables and peace officers, shall be subordinate to, and all their acts and proceedings shall be liable to be inquired into, annulled, corrected, and dealt with by the circuit judge of the said settlement, and by the like method and process, as near as may be, as justices, magistrates, and peace officers are subordinate to the Court of Queen's Bench in England.

Clause 15. And it is hereby provided and declared, that the courts hereby established shall not be competent to hear, try, and determine any charge against any of the judges thereof, nor any charge, not being for treason or felony, against the governor or any of the councillors.

Clause 16. And it is hereby enacted, that the original record or a copy of the proceedings in all cases determined by a resident judge, either with a jury or summarily, shall be furnished to the circuit judge at the earliest opportunity after his arrival at the settlements where the proceedings have taken place; and it shall be

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lawful for him to direct a new trial upon points of law in like manner as in civil cases, without any special application being made to him for that purpose. And it shall be lawful for the circuit judge at his discretion to reserve any points of law occurring in criminal trials before himself, or before any resident judge, for the opinion of Her Majesty's Supreme Court at Calcutta.

XLVII. And it is hereby enacted, that any writ, warrant, or other process, issued by any judge or magistrate of any of the courts hereby established, may be executed within the jurisdiction of any other of the said courts in manner following: A copy of such writ, warrant, or other process, authenticated by the attestation of the judge or magistrate issuing the same, shall be transmitted by such judge or magistrate to any judge of the general court for the settlement in which the process is to be executed, who, upon the receipt thereof, shall endorse the process and direct it to be executed by the sheriff of the settlement, in the same manner and subject to the same rules as if it were a process issued by the said court; and all persons disobeying or obstructing the execution thereof shall be punishable by the said judge as for disobedience or obstruction of process so issued.

XLVIII. Provided, and it is hereby enacted, that the judge to whom any such process shall be transmitted for execution as aforesaid, may return the same for amendment if it shall appear to be defective in form.

XLIX. And provided, that the judge to whom any writ, warrant, or other process for the seizure or detention of any person shall be transmitted for execution as aforesaid, shall have authority by his endorsement thereon to direct that bail may be taken, specifying in such endorsement the amount and number of sureties, and for this purpose to call for such documents and to make such inquiry as he shall think proper.

L. And it is hereby enacted, that the Governor of Bengal shall determine and order whether any and what oaths or affirmations shall be taken or made, and in what manner, by the sheriffs, coroners, and other officers who shall be appointed under this Act.

LI. And it is hereby enacted, that a table of the fees to be taken in the said courts, for any business to be done therein, shall be settled by the Governor of Bengal, and shall be varied from time to time at the discretion of the said governor, subject always to the approbation and correction of the Governor-general of India in Council; and provided that the table of fees which shall be in force in the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, at the time when this Act shall come into operation, shall be observed in the courts established by this Act until a new table of fees shall be settled as aforesaid.

LII. And it is hereby enacted, that indictments, informations, actions, suits, causes, and proceedings, depending in the said Court of Judicature and courts of request which by this Act are abolished, whether originally instituted in such court, in any branch of its jurisdiction, or transferred from any other court or courts, shall not by such abolition be abated, discontinued, or annulled, but the same shall be transferred, in their then subsisting condition respectively, to, and shall subsist and depend in, the said courts hereby established, according to the several jurisdictions hereby given to such courts severally and respectively, to all intents and purposes as if they had been respectively commenced, brought, found, presented, or recorded, in the said courts hereby established; and the said courts hereby established are authorized and empowered to proceed accordingly in all such indictments, informations, actions, suits, causes, and proceedings, to judgment and execution, and to make such rules and orders respecting the same, and also respecting any sum or sums of money belonging to the suitors of the said Court of Judicature and courts of requests as the said courts might have made, or as the said courts hereby established are empowered to make in causes, suits, or proceedings commenced or depending before the said courts hereby established; for which purpose it is enacted, that all the records, muniments, and proceedings whatsoever, of or belonging to the said Court of Judicature or courts of requests, or which ought to be deposited with such courts respectively, shall be delivered and deposited and preserved amongst the records of the general courts of Singapore, Prince of Wales' Island, and Malacca.

LIII. And it is hereby enacted, that the session judge, with the resident judges of the general courts of Singapore, Prince of Wales' Island, and Malacca, hereby established, shall frame such process and make such rules and orders for the execution of the same in all suits to be commenced, sued, or prosecuted, and in all criminal proceedings within their jurisdiction, as shall be necessary for the due execution

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execution of all or any of the powers hereby committed thereto, and shall make such rules with respect to the qualification, appointment, form of summoning, challenging, and service of jurors and assessors, as they may deem expedient and proper, with an especial attention to the different religions, manners, and usages, of the persons who shall be resident or commorant within their jurisdiction, and accommodating the same to their several religions, manners, and usages, and to the circumstances of the country, so far as the same can consist with the due execution of law and the attainment of substantial justice.

LIV. Provided always, and it is further enacted, that all forms of processes, and rules and orders for the execution thereof, which shall be framed by the said courts, shall be transmitted to Her Majesty's Supreme Court at Calcutta, to be by the said court communicated, with their observations, to the Governor-general of India in Council, for correction, approbation, or refusal; and such process shall be used, and such rules shall be observed, until the same shall be repealed or varied by the Governor-general of India in Council.

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From Officiating Secretary to the Government of India to *C. G. Mansel*, Esq., Junior Secretary to the Government of India with the Governor-General.

Legis. Cons. 30 Dec. 1842. No. 30.

Sir,

I AM desired by the Honourable the President in Council to request that you will lay before the Right honourable the Governor-general the papers as per margin, on the question of abolishing the recorder's court in the Straits' settlements, and of passing an Act for this purpose, and for the future administration of justice in those settlements.

Legislative Dep.

Despatch from Court, dated 19 Feb. 1839, No. 2.
Despatch from Court, dated 2 March 1842, No. 3.
Printed copy Law Commissioners' Report, dated 8 Feb. 1842.
Legis. Cons. 22 April 1842, Nos. 19 to 21.
Legis. Cons. 17 June 1842, Nos. 2 to 8.
Letter from Law Commissioners, dated 6 August 1842, with Draft of Act.
Letter from Officiating Advocate-General, dated 11 August 1842.
Minute by Mr. Amos, dated 15 August 1842.
Minute by Mr. Prinsep, dated 17 September 1842.
Minute by Mr. Amos, dated 26 September 1842.
Minute by Mr. Prinsep, dated 30 September 1842.
Minute by Mr. Amos, dated 5 October 1842.
Minute by the President and Mr. Amos, dated 18 October 1842.
Minute by Mr. Amos, dated 9 & 20 November 1842, the latter with One Enclosure.
Minute by Mr. Prinsep, dated 24 November 1842.
Letter from Gov. P. W. Island, dated 28 Sept. 1842, with Enclosures.
Letter from Gov. P. W. Island, dated 4 October 1842, with Enclosures.
Extract Financial Department, dated 30 Nov. 1842, with One Enclosure.

2. In the early part of this year the Report of the Law Commissioners on this long-pending subject was received, and the suggestions offered therein, so far as concerned the kind of judicatures to be substituted for those now in existence, met the general concurrence of the government. The Honourable Mr. Amos prepared the draft of an Act, containing all the material changes in the constitution of the courts, and in the functions of the judges and magistrates; and this draft was approved by his Lordship before he left the presidency. Shortly, however, after his Lordship's departure, but with his previous cognizance and assent given in Council, it was determined that the Law Commissioners should have an opportunity of considering the provisions of the draft prepared by Mr. Amos. Accordingly this draft was transmitted to them, but they were left at liberty to submit another draft, if they saw fit, for carrying out the views expressed in their Report.

3. The Law Commissioners did not reply to this reference until the 6th of August last. The delay can be accounted for, and it is an evidence of the care bestowed in the preparing of the draft; but the provisions of this draft, chiefly as regards the forms of procedure and the functions of assessors, were not in accordance with the sentiments of the President in Council, and were considered in some respects objectionable. Much difference of opinion was also expected to follow when their provisions should be made public; and considering the anxiety of the Honourable Court for the early determination of the question, and the advantages both to the community and the government which will result from the removal of the present cumbrous institutions and forms of administration, it became a question upon which the majority in Council leant to the affirmative, whether it would not be preferable to adopt, and eventually to publish, the draft originally prepared by Mr. Amos, dealing as it does only with the changes in the constitution of the courts, and leaving the details of procedure to be disposed of separately.

4. While this question was yet in some degree in suspense, a reply was received from the governor of Prince of Wales' Island, dated 28th September, to the call made upon him on the 17th June, for his opinion, as well as that of the local officers

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officers of the Straits' settlements, upon the propositions of the Law Commissioners; and as these papers, which will be found as Appendixes Nos. 17 and 18 to this despatch, contained full information and many valuable observations upon the subject under discussion, they led to an entire reconsideration of the previous proceedings.

5. The subject having thus become in some degree complicated, Mr. Amos now recorded a Minute, dated 20th November, in which he took a brief review of its leading features. He remarked that Mr. Fullerton first started the idea of a material reform in the Straits' judicature, which he proposed to effect by dispensing with a professional judge, and making a resident at each of the settlements a judge; the governor to go circuits for hearing appeals, with an appeal in certain cases to Calcutta.

6. Lord Auckland proposed to get rid of the professional judge; to have one resident for the three settlements, who should try causes and prisoners on his circuits; and that a judge from the Calcutta court should be sent to the Straits occasionally to hear appeals.

7. The Law Commissioners, in their Report and draft Act, proposed to have a separate court at each of the three settlements; thus to obviate the necessity of process emanating from a distant place, and to dispense with the register and sheriff for the three settlements, who were highly-paid officers. The head clerk at each settlement to do the duties of register, and a sheriff to be appointed by the court of each settlement, to act for that settlement only.

8. The Straits' authorities, in their recent communication, do not, Mr. Amos continued, object to this arrangement, though a modification is proposed of having two courts at each settlement, the inferior court to be administered by the assistant resident.

9. Respecting, therefore, the division of the courts, the way for legislation appeared clear; and this Mr. Amos conceived was the point upon which the whole reform turned. Mr. Bonham, he observed, had now retracted, in the most unhesitating manner, his former opinion, that a professional resident judge was not necessary. In this all the Straits' authorities agreed; and the Law Commissioners had, indeed, placed the matter out of reasonable doubt. Many of the expectations which had been entertained of a large saving to the revenue from a reform of the Straits' judicature, had, however, been built on the supposition of the recordership being abolished.

10. The economy of the scheme of the Law Commissioners turned on diminishing the expense which followed from having a single court out of which all process issued, and which was obliged occasionally to move from one settlement to another, attended by a cumbrous establishment. This reform would enable the government to save much which is paid to the registrar, sheriff, and some other officers of the court. The proposed diminution of the professional judge's salary had nothing, Mr. Amos remarked, to do with the reform of system, for the judge's duties would be equally or more onerous under the new system. Mr. Bonham, he added, thinks the Commissioners have gone somewhat too far in curtailing the judge's salary; and that something more must be allowed to the head clerks, who, under the new system, would have to act as registrars.

11. Independently of economy, great advantage will arise from the speedy dispatch of justice, and a diminution of its expenses by the establishment of tribunals in which all process may begin and end in the immediate settlement where the parties reside.

12. Whether there should be two courts or one court at each settlement was not, Mr. Amos considered, of any great consequence; perhaps it would be more simple and convenient to have one court; and afterwards, by allotting particular cases for the adjudication of the assistant, all the advantages proposed by having two courts would be obtained.

13. The projects and observations contained in the Straits' papers concerning a division of the judicial and executive authorities, were not necessary to be dwelt upon. The Law Commissioners proposed to leave this to the discretion of government, to be adopted when it might be more practicable than it appeared to be at present.

14. From these outlines of the system to be introduced, Mr. Amos proceeded to matters of importance certainly, but still of secondary consideration.

15. The principal part of the voluminous papers just received from the Straits turned upon one point. They did not approve of the appeal, except upon matters

of

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of law, to the professional judge in any case, and especially in the case of the governor being the lay judge. Mr. Amos was willing, and the Council generally agreed with him, to concede this point, especially as the present practice of the Straits authorities, which they all approved of, appeared not unreasonable. According to the present practice, the professional judge may grant a new trial upon any point of law. On such new trial the lay judge sits with him, and may record his opinion, but the professional judge decides. It was to be observed that the appeal would be less necessary under the new system, as in the distribution of cases, those involving matters which the professional judge would be more competent to decide than the lay judge, would be reserved for him.

16. Upon a variety of matters of detail, as the abolition of the grand jury and the courts of quarter and petty sessions and of requests, the Straits authorities, Mr. Amos remarked, concurred generally with the recommendations of the Commissioners. They preferred, however, a jury, or modification of a jury, to assessors, and they thought the present practice before the civil courts had better be continued, instead of the new practice recommended by the Commissioners. They thought there should be greater restrictions on appeals to Calcutta, and they expatiated on the increase of litigation by appeals to the professional from the lay judge in matters of fact. But this objection, Mr. Amos observed, would be removed if such appellate power were modified as above proposed.

17. The Straits authorities suggested that a provision should be made for the trial of revenue matters now tried before the assistant and an honorary magistrate. They thought that ordinarily two circuits would be enough for the judge to make, and that it was not necessary that all causes involving points of English law should be reserved for him. They offered suggestions on the distribution of civil and criminal business, and they made many observations upon the subject of law agents. The subject of the exclusion from the courts of professional assistance, or assistance by an agent, was one, Mr. Amos remarked, requiring much consideration, and it was not necessary to determine it at present.

18. Mr. Amos adverted to the opinion on the Law Commissioners' draft Act given by Mr. Prinsep, officiating advocate-general, who has personal experience of the Straits settlements. Mr. Prinsep was very much averse to assessors; he would retain the grand jury, but not make their presentments a necessary preliminary to a criminal trial.

19. Having thus stated the general effect of the whole papers and correspondence, Mr. Amos laid before the Council a new draft Act, in which he had incorporated the recommendations of the Straits authorities into the draft of the Commissioners, with alterations to suit the views of the government, and to supply the chief details in which Mr. Prinsep had thought the former draft deficient.

20. The draft thus prepared by Mr. Amos, received at Mr. Prinsep's suggestion two slight alterations, and is that now submitted for his Lordship's consideration. It was the opinion of the president and of Mr. Amos, that under the instructions received from the Honourable Court, the draft might be at once published, as having been read a first time. Sir W. Casement and Mr. Prinsep think rather that the draft ought to be submitted to his Lordship, in this instance, before publication, since it goes to alter a draft Act which, with his Lordship's concurrence, was called for from the Law Commission.

21. Mr. Prinsep goes even further, and doubts the propriety of publishing the draft without another reference to the Home Government; he thinks that dealing, as the proposed law does, with a Royal court, the patent of which must be surrendered, and with a Royal judge who sits and acts by appointment of the Crown, it would be neither deferential nor legal, with reference to the 46th section of the Charter Act, to abolish the existing courts, and to substitute others without the specific sanction of the Court of Directors, and that to do so would leave the judge appointed by the Crown in a false position, which might be avoided by the reference for previous sanction to the entire arrangement. Mr. Prinsep contends, that if the government cannot of itself pass a law of this nature, it ought not, by the publication of the draft, to pledge itself to a course which may not be approved. Mr. Prinsep does not look upon the late despatches from the Honourable Court as a sanction to the measures contemplated in the draft Act. He cites the sentiments expressed by the Honourable Court in 1836, with reference to the Act for permitting British subjects generally to hold lands in India, as condemnatory

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tory of the practice of publishing in India without their previous sanction, drafts of law, the passing of which is conditional upon their sanction.

22. In this particular opinion, however, the majority of the Council do not agree.

23. I am therefore desired to submit the draft Act as agreed upon by the members of Council, and to request the favour of your communicating at an early opportunity, his Lordship's sentiments upon it. The proceedings up to the present date, will be forwarded to the Honourable Court by the earliest possible opportunity.

I have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to the Government of India.

Fort William, 30 December 1842.

(Legislative Department.—No. 3 of 1838.)

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

THE affairs of the settlements in the Straits of Malacca, have recently engaged much of our attention in the general department, from which the principal results of our deliberations will be reported, in due course, to your Honourable Court. Other points connected with the administration of those settlements, which it has been necessary to provide for by legislative enactment, or by executive measures, have been, or will be, treated on in our ordinary despatches.

Legis. Cons. 22 Jan. 1838, Nos. 1 & 2. Legis. Cons. 11 Sept. 1837, Nos. 2 & 3. Legis. Cons. 22 Jan. 1838, Nos. 3 to 5.

2. But we desire to bring the subject of the papers now submitted, as far as they relate to the question of the maintenance of the recorder's court, to the especial notice of your Honourable Court, because, with reference to the great cost of that establishment, and the small numbers and general poverty of those who are subject to its jurisdiction, and for whom it is kept up at the expense of the people of continental India, we think it extremely desirable that we should be furnished with authority, under section 46 of the Charter Act, to abolish the recorder's court as soon as we are prepared to make efficient provision for the more economical administration of justice in the settlements of Prince of Wales' Island, Singapore, and Malacca.

3. We need not repeat here the objections to the maintenance of the court upon its present footing, which have been expressed in the Minutes of the Governor-general, and of Mr. Shakespear, cited below*, and which we entirely espouse. We have of course given the arguments of the late Sir Benjamin Malkin (whose early death we feel to have been a serious public misfortune), in favour of the existing system, all the attention which the ability and eminent moderation with which they were urged, demanded at our hands; but we fully concur with Mr. Shakespear in considering those arguments insufficient to affect our opinions, "as to the inexpediency and injustice of incurring the present inordinate expense for the administration of civil justice to a population not exceeding one-sixth of that of one of our ordinary zillah jurisdictions."

"Nor do the difficulties of allowing an appeal on the record to the Supreme Court at Calcutta, from the local courts, in all civil cases of magnitude, similar to the appeal from the Supreme Court itself to the Privy Council, present themselves to my mind as at all insuperable; indeed I can see no more simple arrangement, none more consonant to existing institutions. While a reference for confirmation of sentence, either to the court or to the Government, as in cases of court martial, might be made in criminal cases in which the sentence exceeded 14 years' imprisonment, all other cases beyond the competency of the magistrate to decide, to be disposed of by a quarter sessions and a jury."

4. We solicit, therefore, authority to abolish the recorder's court in the Straits, and to provide for the administration of justice in the settlements in that quarter, in the manner recommended by Mr. Shakespear, in the passage quoted on the margin, from his Minute of the 27th September last, and supported by the Governor-general in his Minute of the 16th of the following month.

We have, &c.
(signed) *A. Ross.* *H. Shakespear.*
W. Morison. *C. H. Cameron.*

Fort William, 22 January 1838.

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* Minute of Governor-general, dated 9 February 1837.
Extract paragraphs 404 to 421, 423 to 427, and 429 to 456.
Minute by Mr. Shakespear, dated 27 September 1837.
Minute by the Governor-general, dated 16 October 1837.

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(Legislative Department.—No. 15 of 1839.)

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

We have the honour to reply to your Honourable Court's despatch, dated the 19th of February 1839 (Legislative Department, No. 2.)

2. With reference to those parts of the despatch, and of the papers which accompanied it, that relate to the transportation of European convicts, we have the honour to solicit that your Honourable Court will take measures for procuring an Order in Council, under the 6 Geo. 4, c. 69, s. 4, authorizing each of the local governments of this country to appoint the places to which persons sentenced to transportation by the Indian courts may be sent. This provision will of course apply only in the case of European convicts. The statute in question appears to have been overlooked, for no Order in Council under it has ever been received, as we believe, by any Indian government.

3. We have, in obedience to the orders contained in this despatch, referred the question of the abolition of the recorder's court in the Straits to the Indian Law Commission.

4. A copy of a Minute by our colleague, Mr. Amos, on the points noticed in the opinions of counsel, which accompanied your despatch, is forwarded herewith. Legis.Cons.24 June 1839, Nos.56 & 57.

We have, &c.

(signed) *T. C. Robertson.*
W. W. Bird.
W. Casement.
A. Amos.

Fort William, 24 June 1839.

(Legislative Department.—No. 32 of 1842.)

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

With reference to our despatch, No. 10, dated the 6th May last, we have the honour to forward to you printed copies of the Law Commissioners' Report, dated the 8th February last, on the subject of abolishing the recorder's court in the Straits settlements, and the draft Act prepared by them for amending the judicature of those settlements.

2. We also beg to enclose copies of the Minutes recorded by the members of this Board on the receipt of the Law Commissioners' draft of Act, of papers since received from the authorities in the Straits, and of Minutes recorded in consequence by Messrs. Amos and Prinsep. Legis.Cons. 22 Apr. 1842, Nos. 18 to 21. Legis.Cons. 17 June 1842, Nos. 2 to 8. Legis. Cons. 22 July 1842, No. 13. Legis. Cons. 2 Sept. 1842, No. 66. Legis.Cons. 30 Dec. 1842, Nos. 3 to 30.

3. The paper marked No. 34 in the packet is the draft Act, as settled by us after full discussion of the recommendations of the Law Commissioners and of the Straits authorities, and of such alterations in them as it appeared to us individually to require.

4. Aware of your Honourable Court's wishes for the early completion of the measure, our president and Mr. Amos were of opinion that the draft should be at once published, as having been read for the first time. Sir William Casement and Mr. Prinsep thought rather that the draft should be submitted to the Governor-general before publication, as it goes to alter a draft Act, which, with his Lordship's concurrence, was at first called for from the Law Commissioners.

5. We have adopted this latter course, and the papers are now under transmission to the Governor-general, to whom we have also submitted the question raised by our colleague, Mr. Prinsep, whether it would be proper to publish the draft without previously submitting it for the sanction of your Honourable Court.

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We do not consider that any further expression of your Honourable Court's sentiments than what your Honourable Court has already communicated is necessary.

We have, &c.

(signed) *W. W. Bird.*
Wm. Casement.
A. Amos.
H. T. Prinsep.

Fort William, 30 December 1842.

EXTRACT from a DESPATCH from the Honourable the Court of Directors, in the Legislative Department, No. 2 (19 February) of 1839.

Para. 2. THE first of these questions is thus stated: "Whether the Legislative Council of India has the power of enacting a law or regulation for the abolition of the recorder's court of Prince of Wales' Island, Singapore, and Malacca, as it now exists under the charter of justice before alluded to, and to make other regulations for the administration of justice in those settlements in lieu thereof?"

3. You will perceive that counsel are of opinion that the Legislative Council of India have the power of abolishing the recorder's court of Prince of Wales' Island, Singapore, and Malacca, and of making other regulations for the administration of ordinary justice in lieu thereof, the sanction of the Court of Directors and Board of Commissioners for the Affairs of India having been previously obtained for the exercise of that authority. We desire that you will immediately refer the question for the consideration of the Law Commissioners; and if after receiving their report, and giving due notice, so that the community of those settlements may offer any objections to the plan, you shall still be of opinion that it is advisable to abolish the recorder's court, we hereby convey to you the necessary sanction. You will give us the earliest practicable notice of the tribunal to be substituted for the recorder's court, so that, if necessary, application may be made to the Crown for vesting it with Admiralty jurisdiction.

EXTRACT from CASE, and OPINION, enclosed in Court's Despatch, No. 2, of 1839, Legislative Department.

1st. WHETHER the Legislative Council of India has the power of enacting a law or regulation for the abolition of the recorder's court of Prince of Wales' Island, Singapore, and Malacca, as it now exists under the charter of justice before alluded to, and to make other regulations for the administration of justice in those settlements in lieu thereof?

3 & 4 Will. 4, c. 85, s. 46.

We are of opinion, that with the previous sanction of the Court of Directors, and of course that of the India Board, the Legislative Council of India has the power of enacting a law or regulation for the abolition of the recorder's court of Prince of Wales' Island, Singapore, and Malacca, as it now exists under the charter of justice referred to, and to make other regulations for the administration of ordinary justice in lieu thereof. It will deserve consideration, however, whether such abolition might not involve the abrogation of the late Admiralty jurisdiction in cases of piracy, conferred by the Crown upon the court of Prince of Wales' Island, &c.; and it is not clear that the Legislative Council of India has the power to re-enact and annex to a new court the same powers and authorities given by the Crown to an existing and specified court.

(signed) *J. Campbell.*
R. M. Rolfe.
R. Spankie.
James Wigram.

No. 3.
Recorder's Court: Registration of Conveyances.

(Legislative Department.—No. 3 of 1842.)

Our Governor-General of India in Council.

1. In our despatch in this department, under date the 19th February (No. 2) 1839, we granted to you our sanction for abolishing the recorder's court at Prince of Wales' Island, without which, under section 46 of 3 & 4 Will. 4, c. 85, it is not lawful for you to adopt that measure. We also desired that the question as to the propriety of abolishing that court might immediately be referred for the consideration of the Law Commissioners, and that due notice of any law for the purpose might be given to the community of the three settlements over which the court exercises jurisdiction. Recorder's Court at Penang.

2. We are not apprized what steps have been taken in pursuance of these instructions; but our attention has since been forcibly drawn to the representations regarding the recorder's court contained in Lord Auckland's Minute, under date the 9th of February 1837.

3. In that Minute the charge "necessarily dependent on the present form" of the recorder's court is stated to amount to - - - - *Rs.* 1,23,620
And other judicial charges, exclusive of police, to - - - *Rs.* 91,731

Making a Total of - - - - *Rs.* 2,15,351

While the population of the settlements amounts only to 184,912 souls, of whom there are not 500 Europeans, and the revenue to *Rs.* 5,23,266. This charge seems as disproportionate to the wants of the community as to the resources of the government. If it were otherwise we conceive that it should be met by the imposition of a duty on the trade of the settlements for whose benefit it is incurred, rather than by throwing the burden on the revenues of India.

4. The scheme which had been submitted for Lord Auckland's consideration, and which he observes "might be explained to the Honourable Court as one that might possibly with advantage be substituted for the present inefficient and costly system," is in substance as follows: that there should be one magistrate and assistant at each of the three settlements, exercising both civil and criminal jurisdiction; that there should be one resident for the three settlements, with appellate jurisdiction from the magistrates' courts, and holding his court at each settlement alternately, and that the resident should be authorised to reserve such civil or criminal cases as he might think proper for trial before one of the judges of the Supreme Court of Calcutta or Madras, who should once a year, or oftener, make a circuit of the three settlements.

5. The suggestion with regard to the magistrates and residents' courts (if on consideration deemed advisable) appears to us calculated to effect the requisite reduction of expense, and to be easy of execution. But the proposed deputation of a judge of one of the supreme courts seems liable to some objections, which we should wish you to weigh beforehand. To depute a judge once a year or oftener from one of the Indian presidencies to the Straits would occupy the chief part of his time, and would make his salary, and eventually his pension properly chargeable, at least in the same proportion, to the Eastern settlements: with the additional charges for the circuits, the arrangement, therefore, would not be economical. The expense attending it would also be disproportionate to the small number of cases, either civil or criminal, likely to be reserved for trial by the judge on circuit; and considering that the law as well as the system of judicature would differ from those with which the judge was usually conversant, it may be doubted whether the operation of the arrangement would prove satisfactory, either to the mind of the judge or the public interests. Moreover, unless the services of the judge admit of being altogether dispensed with in the court to which he belongs, it seems unquestionable that his absence for protracted periods could hardly fail to lead to much inconvenience and embarrassment.

6. We wish you to take into consideration, whether after the abolition of the recorder's court, and the completion of the new arrangements consequent thereupon, the

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the advantages of the proposed circuit might not in a great measure be attained without being liable to the objections which we have adverted to, if an appeal or reference were authorised from the resident to the Supreme Court, or to one of the judges, in any case in which ulterior jurisdiction might be deemed advisable.

7. We are the more disposed to believe that an appeal or reference of this nature would prove an adequate and satisfactory arrangement from what is stated in Lord Auckland's Minute. "Mr. Bonham," he observes, "shows that from October 1824 to February 1833, a period of eight years and four months, the settlements have had the benefit of a recorder's presence for only two years. During four years and six months of that time the court was open without a recorder, and the lay judges performed the whole judicial business, without the assistance in any way of a professional judge, or any appeal to one. During the remainder of the above period, viz. 1 year and 10 months, the court was shut altogether, under what appears to have been a misconception of the effect of the abolition of the late government; but had no such misconception occurred, the lay judges would have done the whole business for these 22 months also, for there was no recorder present. Thus the certain presence of a professional judge once a year will really be more than any one settlement has had under the present system. If a power of reference to Calcutta on special cases be given upon the consent of both parties, to which I can see no objection, still greater facilities to the dispatch of business will exist."

8. With reference, therefore, to the recorder's court, the various considerations set out in the Minute of Lord Auckland render it desirable that you should take into your consideration the propriety of its immediate abolition; and on the reconstruction of the judicial system, by which it is to be replaced, the chief points which appear to us to be necessary to hold in view are to provide for the ordinary administration of justice, in the language best understood by the great majority of the inhabitants, the diminution of the excessive charge at which justice is now administered, and to some extent a modification in practice, evidently contemplated by the charter of the English law when applied to Asiatics. But we do not think it necessary that the abolition of the court should be postponed until you have been able to form a new code of laws for the varied population inhabiting the three settlements.

We are, &c

(signed) *George Lyall.*
J. L. Lushington.
P. Vans Agnew.
C. Mills.
J. Petty Muspratt.
H. Shank.
W. H. C. Plowden.
W. Young.
John Colton.
Henry Alexander.
M. T. Smith.
F. Warden.
Archibald Robertson.

London, 2 March 1842.

— No. 4. —

ESTABLISHING A COURT OF SUBORDINATE CIVIL JURISDICTION IN CALCUTTA.

No. 4. Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

(No. 54.)

From *R. D. Mangles*, Esq. Secretary to the Government of Bengal, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, Judicial Department.

Legis. Cons. 1 February 1836. No. 3.

Sir,

With reference to the annexed paragraph of a despatch from the Honourable the Court of Directors, dated the 27th December 1833, No. 13, I am directed by the Honourable the Governor of Bengal to forward to you, for the purpose of being laid before the Governor-general of India in Council, for consideration and orders, the undermentioned documents; viz.

Judicial Dep. Para. 46: "We observe that the receipts of the Court of Commissioners fell short of the disbursements in the year 1828–29 to the extent of *Rs.* 25,287. 9., and in the year 1829–30 to the extent of *Rs.* 27,955. 14. 1. As there is a considerable annual surplus in the court of requests, at Madras, we think it desirable that the systems of the two courts should be compared together, and that the cause of such a difference in their results should be ascertained, and, if practicable, removed.

Copy of a Letter addressed to the Officiating Secretary to the Government of Fort St. George, dated the 10th November 1834.

Letter from the Chief Secretary to Government of Fort St. George, dated the 3d April 1835, with its Enclosures.

Letter to the Commissioners of the Court of Requests at this Presidency, dated the 28th April 1835.

Letter from the Commissioners of the Court of Requests, dated the 15th May 1835.

Letter to the Chief Secretary to the Government of Fort St. George, dated the 19th May 1835.

Letter from the Chief Secretary to the Government of Fort St. George in reply, dated the 11th June 1835, with an Enclosure.

Letter to the Commissioners of the Court of Requests, dated the 30th June 1835.

Letter from the Secretary to the Government of Fort St. George, dated the 21st August 1835, with its Enclosures.

Letter to the Commissioners of the Court of Requests, dated the 22d September 1835.

Letter from the Commissioners of the Court of Requests, dated the 25th September 1835, with its Enclosures.

Letter from the Commissioners of the Court of Requests, dated the 6th October 1835.

Letter to the Commissioners of the Court of Requests, dated the 27th October 1835.

Letter from the Commissioners of the Court of Requests, dated the 14th instant, with its Enclosure.

2. You are requested to return the original enclosures when no longer required.

I have, &c.
(signed) *R. D. Mangles*,
Secretary to the Gov^{t} of Bengal.

Fort William,
29 December 1835.

(No. 7.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal.

Legis. Cons. 1 February 1836. No. 4.

Sir,

With reference to your letter, No. 54, of the 29th ult. with enclosures, on the subject of the revision of the present system of the court of requests, I am desired to suggest that the Honourable the Governor may be pleased to refer to the Commissioners for their opinion whether the scale of fees as specified in the subjoined Memorandum (corresponding more nearly with that prescribed in Regulation X. of 1829) would not be preferable to the scale submitted by them in the enclosure of their communication to your address, dated the 14th ult., and if not, to state their objections, for the information of the Supreme Government.

Legislative Dep.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Gov^{t} of India.

Council Chamber,
18 January 1836.

No. 4.
Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

MEMORANDUM.

SUM SUED FOR.	Summons.	Attachment.	For every Subpœna.	For every Attachment against Witness.	For every Postponement.	Mookter-arnamah.
	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
Company's Rupees - 5	– 8 –	– 4 –	– 2 –	– 2 –	– 4 –	– 4 –
— - - 10	1 – –	– 8 –	– 4 –	– 4 –	– 8 –	– 8 –
— - - 25	2 – –	1 – –	– 8 –	– 8 –	1 – –	
— - - 50	4 – –	2 – –	1 – –	1 – –	2 – –	1 – –
— - - 100	8 – –	4 – –				
— - - 200	16 – –	8 – –	2 – –	2 – –	4 – –	2 – –
— - - 300	32 – –	16 – –				
— - - 435						

Legis. Cons.
1 February 1836.
No. 5.

MINUTE by the Honourable *T. B. Macaulay*, Esq., dated the 1st February 1836.

IN looking through the papers relating to the court of requests at Calcutta, it has occurred to me that it would be desirable to refer these papers to the Law Commission without delay. The Commissioners should be requested to take into their immediate consideration the whole system of the court of requests, its composition, the extent of its jurisdiction, as respects both the amount and the nature of claims, its mode of procedure, its charges, and the way in which those charges are met.

It is my firm conviction that we may, without laying any additional burden on the State, provide Calcutta with a most efficient tribunal, competent to dispose of all the less important and intricate civil cases.

This, however, is only a small part of the benefit which I anticipate from a revision of the system of the court of requests. We may with great advantage make trial in this court of several important reforms, before we introduce them in the mofussil. An apprehension is often expressed by persons whose opinion is entitled to great weight, that principles of jurisprudence which theoretically are unobjectionable, may in practice be found to produce pernicious results; we can never bring this important question to the test with so much care and so little risk as by trying the experiment in a court for the recovery of small debts at the seat of government. A bad system may go on long in a remote zillah without attracting much attention; but evils which are daily felt by every shopkeeper in Calcutta must very soon be brought to our knowledge. The court will sit almost under our own eyes; we shall read its proceedings in the newspapers; we shall very soon be plied hard with petitions if its machinery does not give satisfaction; we shall be able to correct our errors here, and we shall avoid falling into the same errors elsewhere. If, on the other hand, we find, as I have little doubt that we shall, that the theory now generally held by the most enlightened European jurists is confirmed by experience, we shall proceed with greater confidence, and with the approbation of the public, to introduce throughout our empire a rational, cheap, and speedy system of procedure.

(signed) *T. B. Macaulay.*

Legis. Cons.
1 February 1836.
No. 6.

MINUTE of the Governor General and Members.

I CONCUR in the proposition for sending the papers connected with the court of requests to the Law Commission for the purpose stated in the first paragraph of Mr. Macaulay's Minute, the other points adverted to in the Minute being of course open to future discussion when the draft of the law shall be received from the Law Commission.

(signed) *C. T. Metcalfe.* *H. Shakespear.*
H. Fane. *C. T. Robertson.*
W. Morison.

Fort William,
1 February 1836.

No. 4.
Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

(No. 26.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *F. Millett*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 1 February 1836. No. 7.
Legislative Dep.

Sir,

I AM directed by the Honourable the Governor-general of India in Council, to transmit to you, for submission to the Indian Law Commissioners, the several papers specified on the margin,* in original, connected with the court of requests, and to request that the Commission will take into their immediate consideration the whole system of the court of requests, its composition, the extent of its jurisdiction, as respects both the amount and the nature of claims, its mode of procedure, its charges, and the way in which those charges are met.

You are requested to return the original papers when they are no longer required.

I have, &c.

Council Chamber,
1 February 1836.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

(No. 376.)

From *R. D. Mangles*, Esq. Secretary to the Government of Bengal, to *W. H. Macnaghten*, Esq. Secretary to the Government of India.

Legis. Cons. 7 March 1836. No. 5.
Judicial Dep.

Sir,

WITH reference to your letter, No. 7, of the 18th ultimo, and its enclosure, I am directed by the Honourable the Governor of Bengal to forward to you, for the purpose of being laid before the Governor-general of India in Council, the accompanying copy of a letter from the Commissioners of the court of requests, dated the 17th instant.

I have, &c.

Fort William,
23 February 1836.

(signed) *R. D. Mangles*,
Secretary to the Government of Bengal.

From the Commissioners of the Court of Requests, Calcutta, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal, Judicial Department.

Legis. Cons. 7 March 1842. No. 6.
Enclosure.

Sir,

1. IN reply to your letter of the 20th ultimo, we beg to state, that the scale of fees in the memorandum subjoined to Mr. Macnaghten's letter is preferable to that submitted by us, inasmuch as it is more simple; but that, on the other hand, it is open to the objection, that the costs under it would bear a much less even proportion to the sums sued for. Thus, for example, when the sum in dispute amounts to a fraction more than 100 rupees, the suitors would have to pay as much as if it amounted to 300 rupees.

2. The total amount of costs levied under it would, as nearly as we can ascertain,

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* Copy of Letter from the Secretary the Government of Bengal, Judicial Department, No. 54, dated the 29th December 1835.
Ditto - - ditto - - to the Secretary to the Government of Fort St. George, dated 10th November 1834.
Original ditto from the Chief Secretary to Government of Fort St. George, dated 3d April 1835, with Enclosures.
Ditto to the Commissioners of the Court of Requests of Fort William, dated 28th April 1835.
Ditto - - ditto - - ditto - - dated 15th May 1835.
Ditto to the Chief Secretary to Government of Fort St. George, dated 19th May 1835.
Ditto - from ditto - in reply, dated 11th June 1835, with Enclosure.
Ditto to the Commissioners of the Court of Requests, dated 30th June 1835.
Ditto from Secretary to Government of Fort St. George, dated 21st August 1835, with Enclosures.
Ditto to Commissioners of the Court of Requests, dated 22d September 1835.
Ditto - from ditto - ditto - dated 25th September 1835, with Enclosures.
Ditto - from ditto - ditto - dated 6th October 1835.
Ditto - to ditto - ditto - dated 27th October 1835.
Ditto - from ditto - ditto - dated 14th December 1835, with Enclosure.

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tain, be about equal to that realised under the present table of fees, and would be about one-sixth less than what would be levied under the scale proposed by us.

We have, &c.
(signed) *C. W. Brictzike,*
J. W. M'Leod,
W. Dobbs,
Commissioners.

Court of Requests,
17 February 1836.

(A true copy.)
(signed) *R. D. Mangles,*
Secretary to the Government of Bengal.

Judicial Department,
23 Feb. 1836.

(No. 46.)

From *W. H. Macnaghten,* Esq. Secretary to the Government of India, to *F. Millett,* Esq. Secretary to the Indian Law Commissioners.

Sir,

Legislative Dep.

In continuation of my letter, No. 26, dated the 1st ultimo, I am directed by the Right honourable the Governor-general of India in Council, to transmit to you, for the consideration of the Indian Law Commissioners, the accompanying copy of a correspondence, noted on the margin, on the subject of the scale of fees suggested to be levied in future on suits coming before the court of requests for the recovery of small debts.

Copy of a Letter to the Secretary to the Government of Bengal, Judicial Department, No. 7, dated 18 Jan. 1836.
Copy of a Letter from the Secretary to the Government of Bengal, Judicial Department, dated 23 February 1836, No. 376, with Enclosure.

I have, &c.
(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

Council Chamber,
7 March 1836.

(No. 13.)

Legis. Cons.
13 June 1836.
No. 6.

From *F. Millett,* Esq. Secretary to the Indian Law Commissioners, to *W. H. Macnaghten,* Esq. Secretary to the Government of India.

Sir,

The revision of the whole system of the court of requests having been referred to the Indian Law Commissioners, by your letter, No. 26, of the 1st February last, the Commissioners have, in pursuance of those instructions, been engaged in preparing the draft of an Act for remodelling the constitution, jurisdiction, and practice of that Court.

2. In the performance of this duty important reforms have occurred to the Commissioners, affecting to a considerable extent the jurisdiction of his Majesty's Supreme Court of Judicature, and imposing at the same time new duties on its judges. The Commissioners are now desirous to communicate with the judges for the purpose of maturing those reforms, and think that, under the circumstances, it would be more advantageous that they should do so by the special direction of government, of which direction an intimation might be given by government to the judges, than by addressing themselves directly to those authorities. I have therefore been directed to request that you will submit this suggestion to the consideration of the Right honourable the Governor-general of India in Council.

I have, &c.
(signed) *F. Millett,*
Secretary.

Indian Law Commission,
3 June 1836.

(No. 162.)

Legis. Cons.
13 June 1836.
No. 7.

From the Government of India, to the Honourable the Judges of the Supreme Court of Fort William.

Honourable Sirs,

We have received a communication from the Indian Law Commissioners, to the effect, that they are exceedingly desirous to obtain the benefit of your aid in maturing

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maturing a plan for remodelling the constitution, jurisdiction, and practice of the court of requests.

2. Sensible as we are of the advantage of your valuable advice in all matters connected with legislation, we have not hesitated to direct the Law Commissioners to apply to you, not only on the present occasion, but whenever they may stand in need of your assistance, feeling assured that it must be gratifying to you to make your knowledge and experience conducive to the success of the important labours in which the Commissioners are engaged. Should there be any particular channel through which you would prefer that the Law Commissioners should address you, we request that you will do us the favour to let us know, in order that, as regards this point, the Commissioners may be duly apprized of your wishes.

We have, &c.

(signed) *Auckland.* *W. Morison.*
Hy Fane. *Hy Shakespear.*
A. Ross. *T. B. Macaulay.*

Council Chamber,
13 June 1836.

(No. 165.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *F. Millett*, Esq. Secretary to the Indian Law Commission.

Sir,

I am directed by the Right honourable the Governor-general of India in Council, to acknowledge the receipt of your letter, dated the 3d instant, and in reply to forward to you, to be laid before the Indian Law Commissioners for their information and guidance, copy of a communication this day addressed by his Lordship in Council to the judges of the Supreme Court of Fort William. Legislative Dep.

I have, &c.

(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

Council Chamber,
13 June 1836.

From the Honourable Judges of the Supreme Court of Fort William, to the Right Honourable the Governor-general of India in Council.

Legis. Cons. 4 July 1836. No. 1.

Right Hon. Lord and Hon. Sirs,

We have the honour to acknowledge the receipt of your letter, dated the 13th of June, communicating to us the wish of the Indian Law Commissioners that we should aid in maturing a plan for remodelling the constitution, jurisdiction, and practice of the court of requests, and stating that the Right honourable the Governor-general in Council has directed the Law Commissioners to apply to us, not only on this occasion, but whenever they might stand in need of our assistance.

In reply to this communication, we have only to express our willingness to give every assistance in our power to the Law Commissioners in their maturing a plan for remodelling the court of requests, and our readiness on all other occasions on which the Law Commissioners may desire to consult us, to give, as far as we are able, our aid in furtherance of the important labours on which the Commissioners are engaged.

There is no particular channel through which we should prefer to be addressed by the Indian Law Commissioners; we are ready to put ourselves in communication with the Commissioners in the way that may be best suited to the free communication of our opinions on the important subjects to which our attention may be called.

We have, &c.

(signed) *Ed Ryan.*
J. P. Grant.
B. H. Malkin.

Court House, 21 June 1836.

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(No. 187.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *F. Millett*, Esq. Secretary to the Indian Law Commissioners.

Sir,

In continuation of my letter, No. 165, dated the 13th ultimo, I am directed by the Right honourable the Governor-general of India in Council, to forward to you, to be laid before the Indian Law Commissioners for their information, copy of a communication, dated the 21st of the same month, received from the judges of the Supreme Court of the presidency of Fort William, in Bengal.

I have, &c.

Council Chamber,
4 July 1836.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

(No. 975 of 1836.)

Legis. Cons. 18 July 1836. No. 4.

From *H. Townsend*, Esq. Acting Secretary to Government of Bombay, to the Secretary to the Government of India, in the Legislative Department, Fort William.

Sir,

Judicial Dep.

I am directed by the Right honourable the Governor in Council, to transmit to you, for the consideration of the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the senior magistrate of police, dated 8th April last, suggesting the passing of an Act, giving effect under this presidency to the Act of Parliament passed on the 30th July 1835, entitled, "An Act to amend and consolidate the Laws relative to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service," with the opinion of the acting advocate-general, and to state, for the information of his Lordship in Council, that although this government consider the measures of the kind suggested by Mr. Warden advisable, this government have not deemed it necessary to submit the draft of an Act, because the subject applying to the whole of India, it will no doubt engage the attention of the Governor-general, as a general question, should his Lordship be pleased to concur in the views taken by this government regarding it.

I have, &c.

Bombay Castle,
3 June 1836.

(signed) *H. S. Townsend*,
Acting Secretary to Government.

(No. 137 of 1836.)

Legis. Cons. 18 July 1836. No. 5. Enclosure.

From *John Warden*, Esq. Senior Magistrate of Police, Bombay, to the Secretary to Government, Judicial Department.

Sir,

The Act of Parliament of which the accompanying is copy, entitled "An Act to amend and consolidate the Laws relative to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service," was lately brought to my notice by Captain Hopkins, commander of he Buckinghamshire. It has had effect from the 31st day of July last, and if, as I believe, it be in force not only in India, but in every part of the world where a British merchant ship may be found to be subjected to its provisions, and there are two respectable British merchants to enforce them, I beg leave to suggest to the Right honourable the Governor in Council that 50 copies be forthwith printed for the use of this, the collectors and master attendants' departments, and of others whom it may concern.

2. But if it should be said not to have effect here, I think the government of India should be solicited to pass an Act giving it the sanction of law at this presidency.

3. In the 47th paragraph of my Report to the Law Commission, I stated my belief "that there is no class of people who require more protection from tyranny and injustice than sailors," and I am gratified to find that opinion so soon justified by the

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the passing of an Act of Parliament "to give seamen all due encouragement and protection."

4. In the same Report, I stated that I was left to perform my "duty towards seamen without the guidance of a single Regulation, and that the general complaints were that they were disrespectful, broke their liberty, refused to return to their ships, &c. &c.;" and the government will observe that this Act of Parliament gives me authority to act efficiently in all these matters, and at the same time to protect seamen from wrong, and to recover their wages for them in a summary mode without their having recourse to the Supreme Court, the slow and formal proceedings of which render it quite useless to sailors whose ships are about to sail, and which is just the time when disputes arise between commanders and seamen.

I have, &c.

Bombay Police Office,
8 April 1836.

(signed) *John Warden*,
Senior Magistrate of Police.

(No. 19 of 1836.)

From *H. Roper*, Esq. Acting Advocate-general, to *J. P. Willoughby*, Esq. Secretary to Government.

Sir,

I HAVE had the honour to receive your letter of the 28th ult., requesting my opinion as to the applicability to British India of the 5 & 6 Will. 4, c. 19, entitled, "An Act to amend and consolidate the Laws relating to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all Men engaged in that Service."

The statute appears to me to have been drawn up in a very loose manner, and I am unable to give a decided or satisfactory opinion with respect to it. Indeed, your inquiry is so general, that in order to give an adequate answer, it might, perhaps, become necessary to comment at great length upon each of the 55 sections in the Act.

The powers given by several clauses in the statute to one or more justice or justices of the peace in any part of his Majesty's dominions, and the powers given by the 51st section to collectors or other chief officers of the customs at the several ports of the United Kingdom, and of the British possessions abroad, unquestionably are conferred on justices of the peace, collectors, and chief officers of custom respectively in British India.

I incline to think that vessels belonging to Bombay, or registered there, and the crews of such vessels, are not within the second section of the statute, which provides that written agreements shall be entered into with his seamen by the master of any vessel belonging to any subject of his Majesty, of the United Kingdom, trading to parts beyond the seas, or of any British registered ship of the burthen of 80 tons or upwards employed in any of the fisheries of the United Kingdom, or in trading coastwise, or otherwise.

The 54th section provides that the Act shall not extend to any ship registered in or belonging to any British colony having a legislative assembly, or to the crew of such ship, while such ship shall be within the precinct of such colony. India, strictly speaking, is not a British colony and has not a legislative assembly; but the Supreme Government of India can now make laws, and therefore, and as the 2 Geo. 2, c. 36, the 2 Geo. 3, c. 31, and the 31 Geo. 3, c. 39, did not apply to vessels belonging to or registered in any port in India, or to the crews of such vessels, I conclude the late Act was not intended to affect such vessels or crews. Besides, though heavy penalties are imposed by the Act, it would seem that no means of recovering in India any greater penalty than 20*l.* is provided by the 53d section.

The register-office for seamen is clearly to be established at the port of London only, and it is unnecessary to establish any such register-office in India.

I have, &c.

Bombay, 4 May 1836.

(signed) *H. Roper*,
Acting Advocate-general.

(True copies.)
(signed) *H. S. Townsend*,
Acting Secretary to Government.

No. 4.

Legis. Cons. 18 July 1836. No. 6.

(No. 192.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *F. Millett*, Esq. Secretary to the Indian Law Commissioners.

Sir,

Legislative Dep.

I AM directed by the Right honourable the Governor-general of India in Council to transmit to you, to be laid before the Indian Law Commissioners, for their consideration, the accompanying copies of a letter from the acting secretary to the government of Bombay, dated the 3d ultimo, and of its enclosures, on the subject of passing an Act for giving effect under the presidency of Bombay to the Act of Parliament of the 30th July 1835, relative to merchant seamen.

2. It has occurred to his Lordship in Council that it would be expedient to confer upon the commissioners of the petty court so much of the power as is given to justices of the peace in England as relates to the recovery of wages due to seamen while in the port of Calcutta, and the Law Commissioners are requested to insert provisions to this effect in any new enactment that may be forthcoming having reference to the petty court. The other branches of river jurisdiction referred to would seem to belong to the bench of magistrates, but it is requested that the whole subject may engage the early attention of the Law Commissioners.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to Government of India.

Council Chamber,
18 July 1836.

(No. 3074 of 1839.—General Department.)

From *W. S. Boyd*, Esq. Acting Secretary to the Government of Bombay, to *H. T. Prinsep*, Esq. Secretary to the Government of India.

Jud. Cons. 2 Dec. 1839. No. 10.

Sir,

I am directed by the Honourable the Governor in Council to transmit to you, for the purpose of being laid before the Honourable the President in Council, copies of the documents noted in the margin, relative to an application for an office or office rent, preferred by the clerk to the court for the trial of small causes.

From the Prothonotary and Registrar to the Supreme Court, dated 29 August 1839.
From the Clerk to the Court for conducting the Small Causes, 17 Aug. 1839.
To the Committee for the Appropriation of Buildings for Public Offices, dated 7 Sept. 1839.
From the Committee for the Appropriation of Buildings for Public Offices, dated 20 Sept. 1839.
To the Civil Auditor, dated 16th October 1839.
From the Acting Deputy Auditor, dated 22d October 1839.

2. Hitherto this appointment has been held in conjunction with that of master in equity, to which latter officer apartments were assigned in the building denominated the "old secretariate," which appear to have been sufficient for the establishments of both; but the appointments having been recently divided between two different individuals, their apartments have been retained by the master in equity, and the clerk to the small causes court thus left without any office or office rent, the latter item of charge having been discontinued in consequence of arrangements made in the year 1829, when both offices were transferred to the public building above alluded to.

3. There are now no public apartments or building available; the Governor in Council has therefore deemed it proper to grant the sum of rupees (75) seventy-five per mensem, as office rent, to enable the clerk to the court for conducting small causes to provide himself with an office. Previous to the transfer of the offices in question to a government building, the gentleman who then held them in conjunction was allowed (100) one hundred rupees a month; but as the present allowance is for one office only, the Governor in Council deems the sum granted sufficient, and trusts that his Honor in Council will be pleased to approve and confirm the measure.

I have, &c.
(signed) *W. S. Boyd*,
Acting Secretary to Government.

Bombay Castle,
1 November 1839.

Jud. Cons. 2 Dec. 1839. No. 11.

From *J. W. Philipps*, Esq. Prothonotary and Registrar, Bombay, to *W. S. Boyd*, Esq. Secretary to Government.

Enclosure.

Sir,

ON forwarding the accompanying letter from Mr. C. A. West to your address, I have the honour to inform you that it has been submitted to the Honourable the Chief Justice, and I am directed by his Lordship to state that he recommends it to the favourable consideration of government, and the more so, as since the year

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1823 the duties of the clerk of the court for conducting small causes, which had formerly been held by a practising attorney, have very considerably increased, requiring a large establishment of purvoes. No office appears to have been originally or at any time assigned to the clerk of the small causes, and for many years past the appointment has been held in conjunction with that of master in equity; but however efficiently the different qualifications for each were combined in Mr. Fenwick, the court deems it expedient, in ordinary instances, that the office of master in equity should be held by a barrister, and that of clerk of the small causes by an attorney.

I have &c.

Bombay Supreme Court,
Registrar and Prothonotary's Office,
29 August 1839.

(signed) *J. W. Philipps*,
Prothonotary and Registrar.

From *C. A. West*, Esq. Clerk to the Court for conducting Small Causes, to *W. S. Boyd*, Esq. Secretary to Government.

Sir,

I HAVE the honour to request you will submit to the Honourable the Governor in Council my application for an office for the clerk to the court for the trial of small causes, to which I was appointed by the Honourable the Chief Justice of the Supreme Court on the 15th of last month, or that the Honourable the Governor in Council will be pleased to sanction an allowance of 175 rupees per mensem, in addition to my present salary of 100 rupees per mensem.

The ground upon which I make the application is, that ever since the 16th of June 1821, the two situations of master in equity and clerk of the small causes court have been held by one and the same person, and the duties of both situations have since that period been conducted in one and the same office.

As the appointments have now been severed, it is quite impossible that this can continue to be the case, and the office occupied by Mr. Fenwick, and subsequently by Mr. Davies, when holding both situations, is now claimed by the latter gentleman, who, as a temporary measure, until the arrival of Sir Henry Roper, is permitted to conduct the duties of his office in the chambers of the puisne judge of the Supreme Court, in the court-house, on whose arrival I shall be without an office for myself and establishment, or a depository for the records of the Small Cause Court.

I have, &c.

Bombay,
17 August 1839.

(signed) *C. A. West*,
Clerk to the Court for conducting Small Causes.

(No. 2514 of 1839.—General Department.)

From *W. S. Boyd*, Esq. Acting Secretary to Government, General Department, Bombay, to the Committee for the Appropriation of Buildings for Public Offices.

Gentlemen,

I AM directed by the Honourable the Governor in Council to refer to you, for your opinion and report, the accompanying copies of a letter from the prothonotary and registrar to the Supreme Court of Bombay, dated 29th ultimo, and of its enclosure from Mr. C. A. West, applying for an office for the clerk to the court for conducting small causes, to which situation he has been appointed.

I have, &c.

Bombay Castle,
7 September 1839.

(signed) *W. S. Boyd*,
Acting Secretary to Government.

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(General Department.)

From Messrs. *L. R. Reid* and *T. Dickinson*, Bombay, to *W. S. Boyd*, Esq. Acting Secretary to Government.

Sir,

We have the honour to state, in reply to your letter, No. 2514, of the 7th instant, and its enclosure, that there is no unoccupied public building which could be made available as an office for the clerk to the court for conducting small causes.

We have, &c.
(signed) *L. R. Reid.*
T. Dickinson.

Bombay,
20 September 1839.

(No. 2886 of 1839.—General Department.)

From *W. S. Boyd*, Esq. Acting Secretary to Government, to the Civil Auditor.

Sir,

I am directed by the Honourable the Governor in Council to transmit to you the enclosed copy of an application from the clerk to the court for conducting small causes for an office, and as the committee for the appropriation of buildings to public offices report that there is no building available for the purpose, to request that you will report what amount should, in your opinion, be granted as office allowance to Mr. West, to enable him to provide one for himself.

I have, &c.
(signed) *W. S. Boyd,*
Acting Secretary to Government.

Bombay Castle,
16 October 1839.

(General Department.)

From *E. Montgomerie*, Esq. Acting Deputy Civil Auditor, Bombay, to *W. S. Boyd*, Esq. Acting Secretary to Government.

Sir,

I have the honour to acknowledge the receipt of your letter of the 16th instant to the address of the civil auditor, transmitting copy of an application from the clerk to the court for conducting small causes for an office, and as the committee for the appropriation of buildings to public offices report that there is no building available for the purpose, requesting to report what amount should be granted as office allowance to Mr. West, to enable him to provide one for himself.

2. In reply, I request you will inform the Honourable the Governor in Council that prior to the tranfer of the offices of master in equity and clerk of the small causes to a public building, Mr. Fenwick held those situations, and was allowed
Rs. 100. 100 rupees per mensem as office rent. I beg, therefore, to recommend that a like sum may be granted to Mr. West, under the same denomination, so long as he may be unprovided with public building for his office.

I have, &c.
(signed) *E. Montgomerie,*
Acting Deputy Civil Auditor.

Bombay Castle,
Civil Auditor's Office,
22 October 1839.

(True copies.)
(signed) *W. S. Boyd,*
Acting Secretary to Government.

(No. 289.)

Jud. Cons.
2 Dec. 1839.
No. 12.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *W. S. Boyd*, Esq. Acting Secretary to the Government of Bombay.

Sir,

Judicial Dep.

I am directed to acknowledge the receipt of your letter, No. 3074, to the address of Mr. Secretary H. T. Prinsep, under date the 1st ultimo, with its enclosure; and in reply, to intimate that under the circumstances represented, the Honourable

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Honourable the President in Council has been pleased to sanction the grant of 75 rupees per mensem for office rent, required by the clerk of the Supreme Court at Bombay for the trial of small causes.

2. His Honour in Council directs me to request you will furnish him with information as to the nature of the court in question, in order that it may be laid before the Indian Law Commissioners, who have now before them a reference concerning the court of requests at Calcutta.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secy to the Govt of India.

Fort William, 2 Dec. 1839.

(No. 1,335 of 1840.—Judicial Department.)

From *W. R. Morris*, Esq. Secretary to the Government of Bombay, to *T. H. Maddock*, Esq. Secretary to the Government of India, in the Judicial Department.

Jud. Cons. 22 June 1840. No. 11.

Sir,

I am directed by the Honourable the Governor in Council to transmit to you, to be laid before the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the Honourable Company's acting solicitor, dated the 7th instant, with its enclosures, furnishing the information called for in the second paragraph of Mr. Officiating Secretary Grant's letter in the Revenue Department, dated the 2d of December last, No. 289, in regard to the court of small causes at Bombay.

I have, &c.
(signed) *W. R. Morris*,
Secretary to Government.

Bombay Castle, 26 May 1840.

From *A. S. Ayrton*, Esq. Acting Solicitor to the Honourable Company at Bombay, to *W. R. Morris*, Esq. Secretary to Government, Judicial Department.

Jud. Cons. 22 June 1840. No. 12.
Enclosure.

Sir,

I HAVE the honour to forward a Minute on the subject of the Small Cause Court, as desired in your letter of the 11th ultimo; and observing the object for which the information is required, I awaited the return of the clerk of the small causes, who was absent from Bombay, in the hope of obtaining some statistics to show the practical operation of the court; but that officer has declined to afford me any information without the permission of the judges of the court.

As I conceive it would be expected by the judges that any communication on the subject should come direct from yourself, I beg to submit for your consideration whether any further information is required by the Bengal government.

I have, &c.
(signed) *A. S. Ayrton*,
Acting Company's Solicitor.

Bombay, 7 May 1840.

A NOTE on the subject of the Small Cause Court at Bombay.

THE Small Cause Court is the common appellation of that branch or side of the Supreme Court which has cognizance of small causes, or those instituted for the recovery of debts not exceeding *Rs.* 350.

On the first establishment of the Mayor's Court, rules were made by the judges to facilitate the adjudication of small causes, which, with some modifications, were adopted by the Supreme Court; a copy of these, now forming the basis of the Small Cause Court, are annexed.

The chief peculiarity in the mode of adjudicating the small causes arises from the functions of the single officer of the court, called the clerk of the small causes, who not only performs the duties of the prothonotary or clerk of the court in respect of the small causes, but is at liberty to act as the attorney for one or both of the parties to the suit.

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The process and mode of procedure are the same as in causes of larger amount; but the conduct of the suit differs considerably when the clerk acts as the attorney of the parties, in which cases a cause usually proceeds in the following manner:

The party desirous of bringing an action attends the clerk of the small causes and states his case, upon which the clerk prepares and files a suitable plaint in his own office, and issues a writ to the sheriff either to summon, or if the amount be sufficient, to arrest, the defendant, as the plaintiff may desire.

The defendant on being served with a summons, attends at the clerk's office and enters his appearance, or if arrested puts in bail before the clerk, and either then or after being served with a rule to plead, states his case to the clerk, who files an appropriate plea, and adds any further pleading that he may think necessary to complete an issue between the parties.

The forms of pleading established in the Supreme Court are not very strictly adhered to, and have been nearly freed from all the technicality; not, however, by any rule of the court, but by the practice of the clerk, who must be anxious to render the pleading as simple and easy as possible.

The cause being at issue, the plaintiff attends the clerk at his desire, and instructs him more particularly in his case, and in the evidence to be adduced in support of it, of which the clerk takes a note for his own use in court, then issues a notice of trial to the defendant, who in like manner attends and instructs the clerk in the nature of his case and evidence; and he subpœnas the witnesses for both parties, and enters the cause in his own book for trial on the earliest court-day.

In the event of the defendant not appearing, the cause is set down *ex parte*, and the plaintiff is compelled to prove his case as if it were defended, which is conducted in like manner by the clerk. This, I believe, is felt by the suitors to be somewhat inconvenient, and it is difficult to understand why no distinction is made between a suit instituted for the trial of a disputed right and one for the recovery of a debt, which the debtor is either too dishonest or too poor to discharge.

It may be doubted whether a debtor, knowing that considerable expense and trouble will be incurred by his creditor, and that some time will elapse in prosecuting a suit, is not encouraged to refuse payment of his debt in the hope of extorting a concession from the creditor.

One of the judges sits every Thursday in court for the trial of the small causes, which are conducted by the clerk, who states the case, and examines the witnesses for the plaintiff, whilst the defendant cross-examines them, or makes suggestions to the clerk for that purpose, and the defence is managed in a similar manner; the judge also takes an active part to facilitate the proceedings, and examines the witnesses, when desired, for the purpose of eliciting the truth.

The attornies of the Supreme Court decline to practise as attornies in the small causes, with the exception of some who, it is believed, occasionally prepare briefs for the barristers, they alone being entitled to appear in court, and the suitor therefore only avails himself of professional assistance at the trial of his cause, in which case he obtains a copy of the pleadings from the clerk, and either employs an attorney or the clerk of the court to deliver the brief to counsel, or prepares it himself and communicates personally with his advocate; the number of cases, however, in which barristers are employed is very inconsiderable.

The costs of each party in an action amount to about 40 rupees, with an additional fee of 15 or 30 rupees when counsel is employed, and are always taxed by the master of the Supreme Court; but the expense of each proceeding will be seen from the accompanying schedule of fees.

The clerk enters up the judgment of the court, and enforces it as the successful party may desire.

The judge entertains all interlocutory applications at the weekly sitting of the court, sometimes in a summary manner, and at others upon affidavit, which are brought to his notice by the clerk at the trial; the cause is postponed in the absence of a material witness, or any interlocutory order is made which may be deemed necessary to satisfy the justice of the case, to which end the strict routine of practice is occasionally modified by the judge.

The efficacy of the rules regarding the small causes seem to depend upon character and qualification of the clerk, whose capacity considerably influences extent of the business, but being remunerated by fees, he is strongly incited to gain the confidence of the suitors; and it is believed that the mode in which small causes

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are adjudicated is highly satisfactory to the community; indeed, it is not unusual for suitors to forego a part of their demands to avail themselves of such cheap and speedy justice, and to avoid the expense and delay of proceeding in the Supreme Court.

A few natives, who are commonly called native lawyers, find occupation in assisting suitors, who are unable or unwilling to attend the clerk; the native lawyers are for the most part accounted disreputable people, whose practices are of the worst description, in which they are the more secure as they are unrecognised by the court; it would, perhaps, mitigate this evil, and meet the wants and convenience of the suitors, if several respectable and intelligent natives were employed as clerks to the clerk of the small causes, and permitted to receive a fee for affording more active assistance to the suitors than can be obtained from the clerk, who must always remain in his own office.

The foregoing statement is in a great measure founded on information derived from others, but I believe it is substantially correct.

(signed) *A. S. Ayrton,*
Acting Solicitor to the Hon. Company
at Bombay.

Rules for conducting Small Causes.

The process shall be confined to actions for debt and liquidated damages, in which the cause of action shall not be less than 80 rupees, or more than 350 rupees. When the plaintiff's demand does not exceed 200 rupees, the first process shall be a writ of summons, unless when the plaintiff's demand shall exceed 150 rupees, and shall not exceed 200 rupees, some special causes shall be shown, by affidavit or affirmation, which shall satisfy the court or the chief justice, or any of the justices, of the same, that the case is such as to require security; and if the defendant, having been summoned, does not appear at the return of the writ, or if before any summons has issued, it shall be sworn by the oaths of the plaintiff or his agent, and that of one other credible witness, that the defendant is about to depart from the jurisdiction of the court; or if there be a certain debt sworn to in behalf of the plaintiff, exceeding the value of 200 rupees, or damages exceeding that amount, which may be reduced to a certainty; or if, when the plaintiff's demand shall exceed 150 rupees, some special cause shall be shown as aforesaid, or if the cause of action shall be in the nature of an enormous personal wrong, a writ of capias may be awarded against the defendant; but no such writ shall in any case be issued unless the court, or one of the judges, being satisfied by affidavit of the truth of the respective facts, shall order the same, in which order shall be specified the sum for which the sheriff shall be authorised to take bail, and the capias shall be marked with the sum sworn to, and with the sum for which the sheriff is authorised to take bail.

The clerk of small causes shall make out, sign, and issue all process, rules, and orders, and his office shall be open every day from ten o'clock till four.

The clerk shall appoint such ministerial officers as he shall think necessary to assist him in the duties of his office, who, as well as himself, shall be amenable to the court for misbehaviour and neglect of duty.

The clerk, upon the application of any person, shall prepare his pleadings, and shall cause to be served all process, rules, and orders; but the party, if he think fit, may employ an attorney for those purposes. Every summons shall be tested on the day it is issued, and shall have four days between the test and return, unless a larger time shall be ordered by the court, or a judge.

The defendant, when summoned, shall within four days after the return day of the writ file an appearance, and enter his name and place of abode, particularly described, in the clerk's office, in default of which the plaintiff, on affidavit of the personal service of such summons, may enter an appearance for the defendant.

The plaintiff may, after appearance, give a rule to plead, and the defendant shall file his plea within four days from the service of such rule.

The court will hear small causes every Thursday.

All the causes shall be set down for trial in the order in which they stand in the clerk's books, of which four days' notice shall be given to the parties or their attorney. If the defendant neglects to file his plea within four days after service of a rule for that purpose, the plaintiff, on affidavit of the due service of such rule, shall be entitled to an order to have his cause set down to be heard *ex parte*.

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If the debt proved shall be less than 80 rupees, and the court be of opinion that the plaintiff had not probable ground for bringing his action for that sum, then he shall be nonsuited. Before issuing any writ of execution the clerk shall make out a bill of costs, to be taxed by the master; but during such time as the two offices of master in equity and clerk of small causes shall be held by one and the same person, such bills of costs shall be taxed by the prothonotary.

The clerk shall at the end of every month produce to the court or a judge all books kept by him relative to his office, and an account of all the fees received by him, and shall at all times when required account upon oath for the same; and that he has not, directly or indirectly, received any greater or other fees than those allowed to be taken and received.

A Table of Fees for conducting Causes, from Rupees 80 to Rupees 350.

	Rs.	a.	p.
Clerk's Fees.			
Drawing, entering, and recording plaint	2	–	–
Entering appearance for defendant, and entering plea, or in confession of action	2	–	–
Account of particulars	1	–	–
Each summons, capias, subpœna, attachment, writ of execution, petition, order, bail-piece, affidavit, except affidavits to hold to bail, and replication	1	–	–
Investigating each bailable case previous to applying for the writ of capias	5	–	–
Affidavit to hold to bail, certificate of plaint filed, and order of capias	3	–	–
Attending swearing and judge signing	1	–	–
Paid swearing and judge's clerk for fiat	2	–	–
Notice of trial, and every other necessary notice	–	2	–
Examining and taking down depositions of witnesses preparatory to trial, if not more than two witnesses, each	1	–	–
If more than two witnesses, for the first witness	1	–	–
For every other witness	–	2	–
The same for administering oath to and examining witnesses of parties at the trial	–	–	–
Administering oath to and examining officers, where necessary to prove service of any notice or process, each	–	2	–
Minuting and entering judgment of record, discontinuance, &c.	1	–	–
Copy of judgment or any process to be served	–	2	–
Service of process and notices within the limits of Bombay, each	–	1	–
The like beyond the limits	–	2	–
Office copy of proceedings, per folio	–	1	–
Each necessary attendance on the judge and officers of the court	–	2	–
Certificate of proceedings	–	2	–
Receiving money into court, and giving receipt and paying same over, and entering satisfaction	1	–	–
Filing every exhibit	–	2	–
Every bill of costs and copy	1	–	–
Sealer's Fees.			
Affixing seal to every process or other paper requiring it, from 80 to 175 rupees	–	2	–
If more than 175, and for affixing seal to every writ of capias and order	1	–	–
Translator's Fees.			
For translations, per folio of 90 words, and seven figures to a word	–	1	–
Interpreter's Fees.			
Examining witnesses, each party in each cause	–	2	–
Sheriff's Fees.			
For executing every writ of execution	1	–	–
Poundage on every debt levied by execution, 2½ per cent.			
Sheriff's Marshal.			
For every writ executed by the sheriff, and for every commitment and discharge	–	1	–
Master.			
For taxing each bill of costs	2	–	–

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	Rs.	a.	p.
Fees to be allowed as Advocate's Fees.			
For attendances in each cause at the trial, if the cause of action should not extend 175 rupees	15	–	–
Refresher fee	7	2	–
If more than that sum	30	–	–
Refresher fee	15	–	–
Attorney's Fees.			
Warrant to sue or defend	1	–	–
Drawing and engrossing plaint	5	–	–
Drawing bill of particulars for plaintiff or defendant	3	–	–
Drawing plea	3	–	–
Notice, copy, and service	1	–	–
Drawing and engrossing affidavit or petition	2	–	–
Drawing brief and examining witnesses	12	–	–
Attending court	5	–	–
Every necessary attendance on the judge, counsel, or any of the officers of court	–	2	–

(True copy.)

(signed) *A. S. Ayrton.*

(True copies.)

(signed) *W. R. Morris,*
Secy to Govt.

(No. 92.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commissioners.

Jud. Cons. 22 June 1840. No. 13.

Sir,

I AM directed by the Right hon. the Governor-general in Council to transmit to you, for the information and consideration of the Law Commissioners, in connexion with the reference now before them concerning the court of requests, the accompanying copies of a letter, No. 1335, dated the 26th ultimo, and of its enclosures, from the secretary to the government of Bombay regarding the nature of the Court of Small Causes at Bombay.

Judicial.

I have, &c.

Council Chamber,
22 June 1840.

(signed) *T. H. Maddock,*
Secretary to the Government of India.

(No. 1402.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *F. J. Halliday*, Esq. Jun. Secretary to the Government of India, Judicial Department.

Jud. Cons. 7 Sept. 1840. No. 4.

Sir,

I AM directed by the Right hon. the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying correspondence * with the commissioners of the court of requests relative to the very anomalous position in which the court has been placed by a recent decision of the Supreme Court in the case of W. Anderson, on a plea of trespass.

Judicial Dep.

I have, &c.

Fort William,
25 August 1840.

(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

P. S.—Please to return the enclosures.

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* Letter from the Commissioners of the Court of Requests, dated 4th November 1839, No.
„ to - ditto - - ditto - dated 5th November 1839, No. 1776.
„ from - ditto - - ditto - dated 8th November 1839, No.
„ to - ditto - - ditto - dated 12th November 1839, No. 1806.
„ from - ditto - - ditto - dated 3d August 1840, No.

No. 4.

Jud. Cons. 7 Sept. 1840. No. 5. Enclosure.

From the Commissioners of the Court of Requests, to *F. J. Halliday*, Esq. Secretary to Government, Judicial Department.

Sir,

THE 3d commissioner, and Mr. Ford, bailiff of this court, having been summoned to defend a case of trespass instituted in the Supreme Court by a Mr. W. Anderson, we beg to request that you will obtain the orders of government for their law officers to defend the case.

We have, &c.
(signed) *J. W. Macleod.*
Russomoy Dutt.
George Lay.

Court of Requests,
4 November 1839.

(No. 1776.)

From *J. H. Young*, Esq. Deputy-Secretary to the Government of Bengal, to the Commissioners of the Court of Requests.

Gentlemen,

Judicial. PREVIOUS to issuing instructions to the law officers of government, as requested in your letter of yesterday's date, I am directed by his Honor the Deputy-Governor of Bengal to inquire the particulars of the case of trespass to which your communication refers.

I am, &c.
(signed) *J. H. Young*,
Deputy-Secretary to Government of Bengal.

Fort William,
5 November 1839.

From the Commissioners of the Court of Requests, to *J. H. Young*, Esq. Deputy-Secretary to the Government of Bengal.

Sir,

WE have the honour to acknowledge the receipt of your letter, dated 5th inst., and in reply beg leave to state, that in a case brought before this court by one J. Weaver against W. Anderson, the court decreed against the said W. Anderson, and he not paying the amount decreed, a seal warrant was granted and signed by R. Dutt, esq. 3d commissioner, to recover the amount. The writ was directed to Mr. Ford, bailiff of this court, and in consequence of his having executed the same, the present action of trespass has been instituted in the Supreme Court by Mr. Anderson.

We have, &c.
(signed) *J. W. Macleod*,
Russomoy Dutt,
George Lay,
Commissioners.

Court of Requests,
8 November 1839.

(No. 1806.)

From *J. H. Young*, Esq. Deputy-Secretary to Government of Bengal, to the Commissioners of the Court of Requests.

Gentlemen,

Judicial. I AM directed by the Hon. the Deputy-Governor of Bengal to acknowledge the receipt of your letter, No. , of 8th instant, on the subject of an action for trespass brought against one of the commissioners.

2. In reply, I am directed to state, that it appears to his Honor inexpedient to allow on such an occasion the assistance of the government law officers. The parties sued must defend themselves, and if eventually the case should turn out favourably for them, it will be for consideration whether, on due application, the defendants may not be relieved by government of the actual expenses of the proceedings.

I am, &c.
(signed) *J. H. Young*,
Deputy-Secretary to Government of Bengal.

Fort William,
12 November 1839.

No. 4.
Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

From the Commissioners of the Court of Requests, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

With reference to the correspondence noted below,* we beg to forward, for the consideration and orders of the Right hon. the Governor of Bengal, the accompanying original report from Mr. T. B. Swinhoe, solicitor to the Honourable Company.

2. On mature deliberation, our attention is obviously, and we think imperatively, directed to the three following heads, as connected with the proceedings in the Supreme Court:—

(1.) A statement of the case noted in the margin, which was decided by this court in July 1839;

J. Weaver *v.* W. Anderson, executor to the estate of R. Parker, deceased.

(2.) The grounds of such decision; and

(3.) The very anomalous position in which this court is now placed by reason of the recent decision of the Supreme Court, which will naturally lead us to offer a few suggestions for future adoption, in order that the public as well as ourselves may know precisely the jurisdiction of the Court of Requests.

On each of these heads we propose now to enter somewhat in detail.

(1.) This case was instituted by the plaintiff, an undertaker, to recover Company's rupees 100. 8, the amount of his bill for funeral expenses. Defendant admitted his executorship, but said he had no assets of the estate in hand, and demurred to the jurisdiction of the court to try the case.

15 July 1839. Weaver *v.* Anderson, executor. Before Commissioner Russomoy Dutt.

On this the parties joined issue, and the plaintiff was required to prove assets.

One J. Peters, witness for the plaintiff, deposed on oath that the deceased's horse and buggy were sold for 125 rupees, and wearing apparel for 100, by order of Anderson, the executor.

Defendant submitted an account showing no assets, but plaintiff prayed the court for time to substantiate the issue, assets or no assets, to which application the court agreed.

As to the jurisdiction, the presiding commissioner informed the defendant that this court had invariably taken cognizance of such suits, and that if defendant had any doubts, his best course would be to remove the case to the Supreme Court by a writ of certiorari. The commissioner also observed that he would consult his colleague, Mr. Macleod, whose experience was more extensive in regard to all such disputed questions.

On this day, by the particular desire of the department, two commissioners sat to hear this case, Messrs. J. W. Macleod and Russomy Dutt. 22 July 1839.

Parties being present, defendant Anderson took the same objections as on the 15th July: first, as to the court's jurisdiction to try suits against executors; and secondly, that he had no assets.

The court, after deliberation, overruled the first objection, and suggested to Anderson again to remove the proceedings to the Supreme Court, and that reasonable time would be allowed to enable him to do so, if still dissatisfied with the opinion of the commissioners.

As to assets, the court would take further evidence.

J. Peters was again called, and deposed on oath, that Anderson sold the deceased's horse and buggy by auction, and bought them himself for 150 rupees; deceased's wearing apparel also was sold, by order of defendant, for 100 rupees, who received net proceeds thereof.

Plaintiff also produced copy of an account current filed by Anderson in the Supreme Court, exhibiting a balance of Company's rupees 154. 14. 8 in favour of the estate, which defendant admitted, after much hesitation, to be a correct copy, but alleged that he had made subsequent payments to Mr. W. D. Shaw, which had absorbed the balance, and would prove this by producing that gentleman.

The

* Letter from the Commissioners to your address, dated 4th November 1839.
Letter from Deputy-Secretary Young to the Commissioners, in reply, dated 5th November 1839.
Letter from the Commissioners to the address of Deputy-Secretary Young, dated 8th November 1839.
Letter from you to the Commissioners, dated 12th November 1839.

No. 4.

29 July 1839.

The court accordingly postponed the further hearing of the case.

Messrs. J. W. Macleod and Russomoy Dutt this day sat to hear the case.

Parties being present, the plaintiff produced the account current noticed in the last day's proceedings, which defendant again examined, and said that he had not brought his witness to prove certain payments made, nor had he taken out a subpœna to compel his attendance.

The court, after duly weighing all that had been elicited and proved as well as admitted on this as well as on former days of its sittings, ordered that a verdict should be entered in favour of the plaintiff for Company's rupees 100. 8, with costs.

Under the above judgment the plaintiff issued execution against the goods and chattels of the defendant, on the 5th August 1839, returnable on the 19th August. This writ was returned unserved, and a new writ obtained on the 23d August, returnable on the 6th September. The effects of the defendant were seized on the 29th August, and he satisfied the judgment of the court, with costs, viz. 121. 2. 9, on the 30th August, which sum was accordingly, in due course, paid over to the plaintiff on the 5th September 1839.

The defendant Anderson addressed the court, after judgment passed against him, in very intemperate language, stating that the proceedings and decree against him were all illegal; but of course the court took no notice of this.

(2.) We will now explain the second part of our subject, viz. the grounds of the court's decision.

The foregoing statement will, we think, furnish sufficient intrinsic evidence of one point, viz. that at the time of the court's verdict there were assets in the hands of the defendant to meet the claim of the plaintiff. Had this not been clearly proved, the case would have failed at once; we contend, therefore, that the decision was consistent with "equity and good conscience;" consistent with reference to the plaintiff's claim also, which, in our humble opinion, is a "simple debt," notwithstanding the technical objection taken by the Supreme Court, with much deference be it said. Moreover, the uniform practice of this court for the last 30 years has been to entertain and try suits against executors, either duly appointed or *de son tort*, and against the heirs and representatives of deceased parties, provided assets could be proved in the hands of such executors or representatives.

The late Mr. Archibald Dobbs, an eminent barrister of the Supreme Court, who for many years held the office of third commissioner of this court, never had any doubts on this subject, and was accustomed to adjudicate all such suits, subject to the limitation already stated.

Again, let us consider the reasonableness of the thing. Executors can at all times resort to the court for the recovery of their claims, and we submit that they should not be exempted from its control if they refuse to pay legatees and other claimants. As matters now stand, by the recent decision of the Supreme Court, every party who has 100 rupees to receive from an executor must apply to that tribunal by an expensive process, which is really a denial of justice altogether.

Again, the Proclamations of 1803, 1813, and 1819, give this court jurisdiction over all persons* indiscriminately, who are either residing within the limits of the city, or following some fixed profession in it, by which they obtain a livelihood.

Anderson, the defendant in the suit which we have detailed, both resided in Calcutta and held a situation at the office of Messrs. Cook & Co., livery stable keepers, when the decree was passed against him in July 1839.

(3.) The anomalous position of the court of requests will, we think, be very apparent, when the following circumstances are duly considered:

Though the learned chief justice, in pronouncing the judgment of the Supreme Court, has clearly stated the non-liability of executors, yet his Lordship has left untouched the meaning of the terms "simple debts." What these are in strict legal phraseology we cannot determine, but heretofore this court has invariably

* Sir F. Macnaghten once observed from the bench, when the question of the attornies of the Supreme Court being exempted from the jurisdiction of the court of requests came on to be argued, "that all were subject to the court of requests, from the highest authority in the city to the lowest menial servant." His Lordship quite repudiated the idea of the attornies of the Supreme Court seeking such an exemption.

variably tried and determined suits of the description stated below, (*a*) and no opposition has been made, except in very few instances. We apprehend, however, that now all those marked thus * must be considered as beyond our control, for, strictly speaking, they are not " simple debts."

The decision of the Supreme Court, then, has not only curtailed the powers of the court of requests, but it has given people a pretence to dispute and cavil at even plain, simple points, which otherwise would never have created any doubts whatever. Almost every European defendant who now appears, for the first time endeavours to discover something, if possible, against the jurisdiction of the court; he pleads it, perhaps, indistinctly, and boldly quotes the opinion of the Supreme Court as corroborative of his view being correct; not all the reasoning or arguments which the commissioners can adduce appear to alter his opinion.

When so much opposition is raised to answer purposes which at first are not quite apparent, it becomes a delicate and critical thing for the court to act with freedom.

Thus indecision and distrust are engendered, business postponed, lest serious consequences might ensue, and the community is perplexed, not knowing where to obtain redress, unless it resorts to the expensive and dilatory tribunal of the Supreme Court, where it would be necessary to incur an outlay of nearly double the amount (*b*) to recover a legacy, for instance, of 200 rupees from an executor, or to carry through all its stages an action of trover for property of a similar amount.

If the court happens to differ from a litigious opulent defendant, and is resolved to proceed notwithstanding the plea of non-jurisdiction, then we are told, " You are beyond your jurisdiction; the consequences will be serious, as I shall proceed against you for a trespass if you issue execution against my property." These are not imaginary fears. Since the decision of the Supreme Court, there is a very manifest opposition evinced to the court of requests by certain bold and reckless people. What their real intentions are it is impossible to conjecture; but we submit that such a state of things as we have endeavoured to portray should not be allowed to exist one hour longer than is necessary to allay the bad feeling which prevails, and to restore to the court that share of public confidence and public respect to which it is certainly entitled, as the only tribunal adapted to assist the community in general in recovering the hard-earned profits of their respective professions.

3. We cannot but express our fears lest another point might come on to be discussed, as it was some years ago, viz. whether one commissioner has power to do all acts as the court of requests? This was doubted in 1823, and one of the judges of the Supreme Court (Sir F. Macnaghten) said publicly from the bench, that " one commissioner was incompetent to do any act, and all consequences that might ensue, even murder, in the execution of his process, both before and after decree, would justly be charged on such commissioner. The matter was considered of so much importance that the then Advocate-general, Sir Herbert Campton, was directed to give his opinion on several points relating to the court of requests.

In a Report, dated the 27th December 1823, Sir Herbert uses the following words. After having stated that he had minutely perused voluminous correspondence,

(*a*) House-rent, servants' wages, bills of exchange, and promissory notes, brokerage, goods sold and delivered, balance of accounts.

* All actions against executors and administrators for legacies, funeral expenses, wages due by the testator to servants, house-rent, and other claims due by ditto.

* Trover for value of goods, ornaments, &c. detained after voluntary deposit, or after satisfaction of loans accrued upon them.

* Damages, costs of repairing carriages, buggies, furniture, &c., broken or otherwise damaged after taking them on hire, or upon loan, or occasioned by furious and incautious driving, or for the value of horses killed by mal-treatment or over-driving.

* Seamen's wages against captains or owners of vessels.

* Short delivery of goods during transit to and from shipping by boatmen, and short delivery of goods under bill of lading.

* All actions arising out of a breach of contract.

* Diet money under an order of a justice of the peace.

(*b*) We have stated that the probable amount of plaintiff's costs of a suit in the Supreme Court for 200 would " be nearly double;" we may say with great safety that the expense would be treble; and for a smaller sum, say 100 or less, the costs would be precisely the same in amount as upon one for 200 rupees.

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dence, various charters, and Acts of Parliament, Sir Herbert comes to this conclusion: "According to the best judgment that I can form, the commissioners cannot lawfully decide causes at the same time in separate chambers, or, in other words, cannot constitute themselves into two courts."

And again, a little further on, the Advocate-general observes: "Provision has been made by law for a single judge to decide causes in the Supreme Court, but the commissioners desire to sit in two chambers, and that one commissioner should have the power of deciding causes, as in the Supreme Court, meaning, as I understand it, a single commissioner in each chamber shall exercise the authority of a court. If this be meant, it will exceed the jurisdiction of the Supreme Court, for there is no instance of the judges administering justice in separate chambers at the same moment of time."

The Chief Secretary, Mr. W. B. Bayley, adverting to the opinion of the Advocate-general, as quoted above, communicates the orders of government to the commissioners, under date the 8th January 1824, in the following words: "The point adverted to in your letter has for some time past been under the consideration of the authorities in England, and until their decision be received, or until a formal opinion of the irregularity of the practice shall be pronounced by the Supreme Court, the Governor-general in Council is of opinion that the practice in question, which has been long established, and which seems essential to the public convenience, should be adhered to."

The commissioners have since 1802 sat in separate chambers. Of the benefits resulting from such a measure there can be but one opinion; but it is more than possible that something at present unforeseen may arise to awaken an inquiry into its legality, and we would respectfully suggest that such a contingency should be quickly provided against. The angry spirit of litigation is not wanting, nor are the means far distant to rouse it into being.

4. Having now taken a review of the whole of this most important subject, we would urgently recommend, in conclusion, that this court should be empowered, by a legislative enactment, to exercise jurisdiction over the whole description of suits enumerated in the margin of the foregoing 3d section, not even excepting executors of estates who have obtained probates as well as executors *de son tort*, if assets can be proved. Provision should also be made, we think, for the commissioners to sit and try causes in separate chambers.

5. Whatever may be the ulterior intentions of government regarding the extension of the court's jurisdiction, the altering of its forms of procedure, or constitution generally, we think that the subjects now under discussion should be settled immediately, that both the public and the commissioners may know how to act. At present all is uncertainty, and we doubt not that the disadvantages of such a state are keenly felt by the tradespeople of this city, and especially by the poorer class of native suitors, who are in the habit of resorting to the court of requests for the settlement of their claims.

6. We beg you will have the goodness to return the letter from Mr. T. B. Swinhoe, when no longer required by you.

We have, &c.
(signed) *C. W. Brietzike,*
Russomoy Dutt,
David Hare,
Commissioners.

Court of Requests,
3 August 1840.

William Anderson v. *Russomy Dutt and Another.*

From *T. B. Swinhoe*, Esq. Attorney of Law, to *Baboo Russomoy Dutt.*

Dear Sir,

This case came on to be argued on the 21st instant, on demurrer to your second plea, before the Supreme Court. This mode of bringing the case forward was adopted by your present counsel, Messrs. Turton & Clarke, directly to raise the point whether the court of requests had jurisdiction against executors.

The judges were unanimously of opinion that your court had no such jurisdiction. I cannot do better than subjoin, at the foot of this letter, the decision of the judges, delivered by the chief justice, as reported in the Bengal Hurkara of the 23d instant, which is correct.

I am, &c.
Calcutta, 23 July 1840. (signed) *T. B. Swinhoe.*

No. 4.
Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

Sir *E. Ryan*, C. J.—If we entertained any doubt whatever, we should take time to consider before deciding upon the jurisdiction of a court, but we entertain none. The jurisdiction of the court of requests is to be found in the Madras charter alone; the subsequent charters, statutes, and proclamations do not vary or extend it; the recital on that clause of the charter is very similar to the recital in the Middlesex Act, and sets forth that the enactment was for the mere simple recovery of small debts. We have no doubt that the object was to give jurisdiction only in cases of "simple debts," and not in the trial of questions of difficult law. Our decision does not proceed upon the case in Douglas, but upon general principles. Look at the consequences if an executor were allowed to be sued in a tribunal constituted like the court of requests: some of the most intricate questions of law may be raised by the defences available to an executor, such as, when a party has made himself executor *de son tort*, whether an executor or administrator has duly administered the assets, and so forth. We are of opinion, therefore, that the plea is insufficient, and that there must be a judgment for the plaintiff on demurrer, with costs.

(signed) *T. B. S.*

(No. 130.)

From *F. J. Halliday*, Esq. Principal Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Jud. Cons. 7 Sept. 1840. No. 6.

Judicial.

Sir,

I AM directed by the Governor-general of India in Council to acknowledge the receipt of your letter, No. 1402, dated the 25th ultimo, with its enclosures, on the position of the court of requests, consequent upon a decision of the Supreme Court in the case of Anderson on a plea of trespass, and in reply to state, for the information of the Right hon. the Governor of Bengal, that the Law Commission is understood to be immediately about to lay before the Supreme Government a Report upon the court of requests, with suggestions upon its powers and constitution. This Report will be considered by the Supreme Government without delay, and will probably lead to a speedy and practical measure of amendment, by which the circumstances now objected to by the commissioners will be altered, and the court itself placed upon a new and more useful footing.

2. The original enclosures received with your letter are returned herewith.

I have, &c.

Council Chamber,
7 September 1840.

(signed) *F. J. Halliday*,
Principal Secretary to the Government of India.

(No. 1,517.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Judicial Department.

Jud. Cons. 12 Oct. 1840. No. 3.

Sir,

Judicial Dep.

I AM directed by the Right hon. the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter* from the commissioners of the court of requests, which has reference to the subject of your letter No. 130, of the 7th instant, and which may, should his Lordship think it advisable, be submitted to the Law Commissioners for their perusal.

* Dated 10th inst. and accompanying statements.

I have, &c.

Fort William,
22 September 1840.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Please to return the enclosure.

No. 4.

Jud. Cons. 12 Oct. 1840. No. 4. Enclosure.

From the Commissioners of the Court of Requests, Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

We beg to acknowledge the receipt of a letter from Mr. J. H. Young, deputy secretary to the government of Bengal, in the Judicial Department, dated the 14th July last, conveying to us the desire of the Right honourable the Governor of Bengal to be furnished with such suggestions as our experience might dictate to enable the court of requests better to discharge its important functions.

2. It has repeatedly been urged on the attention of the commissioners, that though government distinctly disclaims every intention to make the court an engine for increasing the revenues of the state, yet that its receipts ought to be rendered adequate to meet its disbursements. In strict conformity with this principle, we beg respectfully to record our deliberate conviction that the present system of requiring the deposit of costs by the plaintiff, with the discretionary power to the commissioners to admit pauper suits, and to remit costs entirely or in part, is the most calculated to meet the wishes of government, so often conveyed to us. Considering also the spirit of litigation prevalent in Calcutta, we think that it is the most salutary, the most wholesome, and the safest course for the court of requests; for we firmly believe that it does effectually, in a great measure, retard the intitution of groundless suits, and deters the wicked from attempting to harass the honest. It imposes no great hardship upon a person in affluent, or even easy circumstances, if his claim be just and his debtor solvent, whilst it urges an unrelenting creditor to pause before hazarding his good money for the mere gratification of suing and bringing to trouble an unfortunate insolvent debtor. And finally, it in no way injures the poor honest claimant, who can readily obtain process free of costs, at the discretion of the commissioners.

3. In reply to the first paragraph of Mr. Young's letter above alluded to, we think that it cannot be fairly inferred from the commissioners' letter * of the 13th of February 1837, when recommending the appointment of collectors of costs, that they considered the system then in force had a direct tendency to deter suitors from applying to the court for justice, we have taken some pains to inquire into this subject, and we think that it is not the case. What we have already recorded in the 3d, 4th and 5th paragraphs of our letter of the 14th May last, is very much to our present purpose. When the collectors of costs formed a part of the court's establishment, we know that a vast majority of the poorer suitors preferred depositing costs to employing those officers; and we consider this fact of great importance in support of our present argument. If it be said that the payment of costs by plaintiffs operates as a denial of justice, we answer that the experience of many months proves the contrary, and that this objection is at once overcome by referring to the rules for the admission of pauper claimants.

4. We avail ourselves of this opportunity to bring to the notice of the Right honourable the Governor of Bengal the subject treated in the 7th paragraph of the commissioners' letter, dated 25th September 1835, to the address of Mr. J. P. Grant, officiating secretary to the government of Bengal in the Judicial Department, we mean that of costs on suits from one to ten rupees, pressing still heavily upon suitors, though a considerable reduction was made by the proclamation of 1819. In any new rules which the government may be pleased to enact for the court of requests, we think that a beneficial modification might be made by the substitution of a fixed rate of per-centage only upon the sum sued for, instead of levying any other fees on the different processes as at present. We are persuaded that such a modification would more justly equalize the payment of costs on all classes of suitors; that it would raise a sufficient fund for the payment of all charges connected with the court, and would materially simplify the accounts of this office. The accompanying tabular statement exhibits the costs now leviable, as well as those which would be charged if a per-centage were sanctioned.

We have, &c.

(signed) *C. W. Brietzike*,
Russomoy Dutt,
David Hare,
Commissioners.

Court of Requests,
10 Sept. 1840.

* It was the opinion of two of the commissioners in 1837, that the appointment of collectors would never succeed, and that the evils already reported in our letter of May last would inevitably grow out of it. Experience has taught us that this view was correct. Still the two dissentient members of the court joined in the recommendation, in order to try the experiment.

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STATEMENT showing the AMOUNT of COSTS chargeable on different SUITS under the present System, and what they would Amount to at different Per-centage.

Amount of Suit.	Decree or Dismiss Costs.		Non-Suit Costs.	Compromise Costs.	Per-centage.			
	After an Attachment, Two Subpœnas, and a Writ of Execution.	Without these Processes.			25 per Cent. or 4 Annas per Rupee.	18¾ per Cent. or 3 Annas per Rupee.	12½ per Cent. or 2 Annas per Rupee.	6¼ per Cent. or 1 Anna per Rupee.
Rupees.								
1 -	1 12	- 4	- 3	- 2	- 4	- 3	- 2	- 1
5 -	2 12	1 4	- 15	- 10	1 4	- 15	- 10	- 5
8 -	3 8	2 -	1 8	1 -	2 -	1 8	1 -	- 8
10 -	4 -	2 8	1 14	1 4	2 8	1 14	1 4	- 10
18 -	5 4¾	3 12¼	3 4¾	1 14	4 8	3 6	2 4	1 2
20 -	5 8	4 -	3 8	2 -	5 -	3 12	2 8	1 4
25 -	6 -	4 8	4 -	2 4	6 4	4 11	3 2	1 9
30 -	6 8	5 -	4 8	2 8	7 8	5 10	3 12	1 14
35 -	7 -	5 8	5 -	2 12	8 12	6 9	4 6	2 3
40 -	7 8	6 -	5 8	3 -	10 -	7 8	5 -	2 8
50 -	14 -	11 -	9 -	4 8	12 8	9 6	6 4	3 2
55 -	14 8	11 8	9 8	5 12	13 12	10 5	6 14	3 7
60 -	15 -	12 -	10 -	6 -	15 -	11 4	7 8	3 12
70 -	16 -	13 -	11 -	6 8	17 8	13 2	8 12	4 6
75 -	16 8	13 8	11 8	6 12	18 12	14 1	9 6	4 11
80 -	17 -	14 -	12 -	7 -	20 -	15 -	10 -	5 -
90 -	20 -	17 -	15 -	8 8	22 8	16 14	11 4	5 10
100 -	21 -	18 -	16 -	9 -	25 -	18 12	12 8	6 4
180 -	26 -	23 -	21 -	11 8	37 8	28 2	18 12	9 6
200 -	42 -	36 -	30 -	18 -	50 -	37 8	25 -	12 8
250 -	47 -	41 -	35 -	20 8	52 8	46 14	31 4	15 10
300 -	52 -	46 -	40 -	23 -	75 -	56 4	37 8	18 12
350 -	61 -	55 -	47 -	27 8	87 8	65 10	43 12	21 14
400 -	66 -	60 -	52 -	30 -	100 -	75 -	50 -	25 -

N.B.—The first column exhibits costs of decree and dismiss only; but all postponement costs, and additional attachments against defendants and attachments against witnesses, are not included.

(signed) *C. W. Breitzike*, Commissioner.

(No. 145.)

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 1517, dated the 22d ult., with its enclosures, relating to the court of requests, and to return them herewith, copies having been communicated to the Law Commissioners. Judicial.

I have, &c.

Council Chamber,
12 Oct. 1840.

(signed) *F. J. Halliday*,
Junior Secy to the Govt of India.

(No. 146.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to transmit to you, for the information of the Law Commissioners, copy of a correspondence noted in the margin, relating to the court of requests.

Letter from Secretary Government of Bengal, dated 25th August last, with Enclosures.
Letter to ditto, dated 7th September last.
Letter from ditto, dated 22d Sep. last, with Enclosures.

I have, &c.

Council Chamber,
12 Oct. 1840.

(signed) *T. H. Maddock*,
Secy to the Government of India.

No. 4.

(No. 324.)

Jud. Cons. 22 March 1841. No. 1. Judicial Dep.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the commissioners of the court of requests, dated the 23d ult., being a continuation of the correspondence submitted along with my letter, No. 1402, of the 25th August last.

2. The Governor has instructed me to add, that he has acceded to the solicitation of the commissioners as respects the payment of the costs to which they refer.

I have, &c.
(signed) *F. J. Halliday.*
Sec^{y} to the Gov^{t} of Bengal.

Fort William,
2 March 1841.

P. S.—Please to return the enclosure.

Jud. Cons. 22 March 1841. No. 2. Enclosure.

From the Commissioners of the Court of Requests, Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

WITH reference to our letter of the 15th September last, and the orders of the Right honourable the Governor of Bengal, No. 1548, dated the 29th of the same month, we have the honour to report that the action of trespass instituted in the Supreme Court by Wm. Anderson has been compromised, in conformity with the advice of Mr. Advocate-general Turton, and the orders of Government above alluded to.

2. We beg to forward the accompanying taxed bills of costs, viz.:

	Co's Rs.	*a.*	*p.*
Mr. T. B. Swinhoe's bill for the costs of the defendant - -	1,620	6	4
Mr. W. D. Shaw's bill for the costs of the plaintiff, including 200 rupees, the compromise money offered - - -	654	3	–
TOTAL - - - *Co's Rs.*	2,274	9	4

And to request that you will be pleased to submit them to the Right honourable the Governor of Bengal, for his Lordship's permission to charge the amount in the acounts of the court of requests.

3. We respectfully hope that we shall not be considered presumptuous in adverting to our letter of the 3d August last, in which we endeavoured to point out to his Lordship the painful position in which the commissioners were placed by reason of the indefinite and unsettled jurisdiction of this court. The experience of the past seven months has convinced us that our views were by no means exaggerated. We feel daily considerable embarrassment in our official situation to act with confidence or with usefulness to the public, since the spirit of opposition to this court, by dishonest debtors, has now reached to that extent as almost to cripple us in the due discharge of our duties. It is not improbable, as we before hinted in our letter of 3d August, that objections may be urged against the competency of one commissioner to hold proceedings in this court; and should the question be formally decided by the Supreme Court in the negative, we are persuaded that the public interests will suffer very seriously, and ourselves become subjected to prosecution.

4. In the present instance (we mean the trespass case instituted by Anderson), to say nothing of the heavy pecuniary outlay incurred in adopting the proper legal steps in justification of our official conduct, let it be considered what has occurred since the decision of the Supreme Court in July last.

The court of requests has lost much of its public confidence. Hundreds of suitors are prevented from resorting to it. Dishonest debtors are at ease, because their

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their creditors cannot have recourse to the expensive tribunal of the Supreme Court for the recovery of many claims of which this court formerly took cognizance, and even in cases where our path of duty may appear to us very clear, legal objections may be raised, and legal proceedings adopted, which may render it necessary to act in the defensive at the immense risk of incurring heavy law charges, unless government should in every instance authorise the employment of its law officers to take up our cause on hand free of costs.

5. At such a crisis we consider it our duty to call on government to interpose on our behalf, and we earnestly entreat his Lordship to issue such orders on this important subject as shall relieve us from embarrassment, and render the court more efficient than it at present is.

We have, &c.
(signed) *C. W. Britzike,*
Russomoy Dutt,
David Hare,
Commissioners.

Court of Requests,
23 February 1841.

P. S.—The attorney of the plaintiff, Mr. Shaw, not having forwarded his taxed bill through the Honourable Company's solicitor, we do not think it necessary to wait any longer, as a considerable period has elapsed since the decision of the Supreme Court. When Mr. Shaw's bill reaches us, we shall immediately submit it for the orders of government.

In the Supreme Court of Judicature at Fort William, Bengal.

Plea Side.

William Anderson v. *Russomoy Dutt and Thomas Ford.*

Costs of the Defendants taxed as between Attorney and Client, under a Judge's Fiat of the 29th January 1841.

Sa.Rs.a.p.		*Sa. Rs. a. p.*
	1839:	
	October 21st. Attending receipt of a letter from Mr. Macleod, chief clerk of the court of requests, enclosing a letter addressed to Russomoy Dutt by Mr. Shaw, the plaintiff's attorney, and requesting me to receive the summons in this cause; (No. 1) - - - - - - - - - -	2 8 –
	Writing a letter to Mr. Shaw, requesting him to direct the sheriff to serve the summons upon me - - - - -	2 – –
	November 2d. Attending sheriff's officer when he brought to me the summons in this case, and signing my understanding to appear for the defendants; (No. 2) - - - - - -	2 8 –
	Warrant to defend - - - - - - - - - -	2 – –
	Attending at the court of requests getting same signed by Russomoy Dutt and Mr. Ford - - - - - - -	2 8 –
	November 4th. Drawing instructions on the warrant to enter my appearance for the defendants - - - - - -	1 – –
	Attending prothonotary's office filing same, and paid 15 annas -	1 15 –
1 – –	November 6th. Attending bespeaking and afterwards attending obtaining office copy plaint, and paid 3rs. 4 a. 6 p.; (No. 3) -	5 4 6
	Attending clerk of the papers' office, searching, and found rule to plead, entered on the 1st instant, paid 15 annas; (No. 4) -	1 15 –
	November 7th. Attending client, going over the plaint with him, and conferring and advising thereon, when found there was an error therein, and receiving instructions to apply to Mr. Shaw to amend the same, and to give us further time to plead - - - - - - - - - - -	2 8 –
	Writing a letter to Mr. Shaw on the subject, and attending receipt of his reply agreeing to my having further time to plead; (No. 5) - - - - - - - - - -	2 8 –
	November 8th. Attending client, Russomoy Dutt, when he brought to me all the original proceedings had before him in the suit against the plaintiff in the court of requests, going over same with him, conferring and advising thereon, and receiving instructions for pleas; two hours - - - -	5 – –

(continued)

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S. Rs. a. p.	1839:	Sa. Rs. a. p.
	November 8th. Drawing and fair copying plea of the defendant Russomoy Dutt; fols. 16	17 8 –
	Attending Mr. Cochrane therewith for settlement, and paid fee, 32 rs.; (No. 6)	34 8 –
	Drawing and fair copying plea of the defendant Thomas Ford; fols. 16	17 8 –
	Attending Mr. Cochrane therewith for settlement, and paid him fee, 32 rs.; (No. 7)	34 8 –
	November 12th. Attending receipt of a copy order of the 8th instant from Mr. Shaw to amend the plaint in this cause, and perusing; (No. 8)	2 8 –
	November 13th. Attending receipt of the original order from Mr. Shaw, and signing my acknowledgment for costs on the back of the order	2 8 –
	November 14th. Attending Mr. Shaw getting my office copy plaint amended	2 8 –
	November 18th. Term fee	3 – –
	November 21st. Attending bespeaking and obtaining judge's summons that the defendant Russomoy Dutt do plead several matters, and paid 1 r. 14 a.; (No. 9)	4 6 –
	Copy and service thereof on Mr. Shaw; fols. 2	3 8 –
	Attending bespeaking and obtaining judge's summons, that the defendant Thomas Ford do plead several matters, and paid 1 r. 14 a.; (No. 10)	4 6 –
	Copy and service thereof on Mr. Shaw; fols. 2	3 8 –
	November 23d. Drawing and engrossing affidavit of service of summons that the defendant Russomoy Dutt do plead several matters; fols. 2; (No. 11)	3 8
	Attending before judge swearing same, and obtaining order to plead several matters, and paid 2 rs. 14 a. 10 p.	5 6 10
	Attending prothonotary's office filing same, and paid 2 rs. 13 a.	3 13 –
	Afterwards attending obtaining order, and paid 2 rs. 11 a. 1 p.	3 11 1
	Seal, and attendance thereon	1 15 –
	Copy and service thereof on Mr. Shaw; fols. 3	4 – –
	Drawing and engrossing affidavit of service of summons, that the defendant Thomas Ford do plead several matters; fols. 2; (No. 12)	3 8 –
	Attending before judge swearing same, and obtaining order to plead several matters, and paid 2 rs. 14 a. 10 p.	5 6 10
	Attending prothonotary's office filing same, and paid 2 rs. 13 a.	3 13 –
	Afterwards attending obtaining order, and paid 2 rs. 11 a. 1 p.	3 11 4
	Seal, and attendance thereon	1 15 –
	Copy and service thereof on Mr. Shaw; fols. 3	4 – –
2 8 –	November 24th. Attending receipt of the draft plea of Russomoy Dutt back from Mr. Cochrane, settled by him; (No. 13)	2 8 –
	Attending Mr. Advocate-general therewith, and conferring, when he approved of the same	2 8 –
2 8 –	November 26th. Attending receipt of the draft plea of Thomas Ford back from Mr. Cochrane, settled by him; (No. 16)	2 8 –
	Attending Mr. Advocate-general therewith, and conferring, when he approved of the same	2 8 –
	November 27th. Engrossing plea of the defendant Russomoy Dutt; fols. 16	8 – –
	Attending clerk of the papers' office filing plea and original order, and obtaining a rule to reply, and paid 4 rs. 11 a.; (No. 15)	5 11 –
	Seal, and attendance thereon	1 15 –
	Copy and service thereof on Mr. Shaw; fols. 2	3 8 –
	Engrossing plea of the defendant Thomas Ford; fols. 16	8 – –
	Attending clerk of the papers' office filing same and original order, and obtaining a rule to reply, and paid 4 rs. 11 a.; (No. 16)	5 11 –
	Seal, and attendance thereon	1 15 –
	Copy and service thereof on Mr. Shaw; fols. 2	3 8 –

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S. Rs. a. p.		Sa. Rs. a. p.
	1839:	
2 8 –	November 30th. Attending receipt of a letter from Mr. Shaw, requesting me to give him more time to reply to the plea, and answer; (No. 17) - - - - - - - - -	2 8 –
	1840:	
	January 20th. Attending clerk of the papers' office searching, and found no replications filed to the pleas of the defendants, and paid 1 r. 14 a. - - - - - - - - -	2 14 –
	January 24th. Attending receipt of a letter from Mr. Shaw, stating that his client wished to take the opinion of the court, as to whether the court of commissioners had jurisdiction over executors, and requesting to know if my client would agree thereto; (No. 18) - - - - - - - - -	2 8 –
	Making a copy of Mr. Shaw's letter; fols. 3 - - - - -	1 8 –
	January 25th. Writing a letter to client therewith, requesting him to let me know his determination on the subject - -	2 – –
	Attending clerk of the papers' office searching, and found no replications filed to the pleas of the defendants, and paid 1 r. 14 a.; (No. 19) - - - - - - - - -	2 14 –
	January 28th. Attending receipt of a letter from the chief clerk of the court of requests, in reply to mine of the 25th instant, requesting me to leave the case entirely in the hands of the Advocate-general, to be brought on before the Supreme Court in the manner he might consider advisable, and perusing; (No. 20) - - - - - - - - -	2 8 –
	Making a copy thereof; fols. 6 - - - - - - -	3 – –
	Attending the Advocate-general therewith, and conferring with him thereon at great length, when he advised the course suggested in Mr. Shaw's letter of the 24th instant; two hours	5 – –
	January 29th. Writing a letter to client, informing him thereof	2 – –
	May 5th. Attending Mr. Shaw, when he gave me a replication to the plea of the defendant Russomoy Dutt for my perusal, and conferring - - - - - - - - -	2 8 –
	Drawing and engrossing instructions to Mr. Clarke to draw a rejoinder; fols. 2 - - - - - - - - -	3 8 –
	Attending Mr. Clarke therewith, and with the office copy plaint and plea, and paid him fee, 16 rs.; (No. 21) - - -	18 8 –
	Afterwards attending receipt of a letter from Mr. Clarke, wishing to have a consultation with the Advocate-general on the replication this day, and answering - - - - -	2 8 –
	Attending the Advocate-general fixing time for consultation, and paid 48 rs.; (No. 21/4) - - - - - -	50 8 –
	Attending Mr. Clarke informing him thereof, and paid 48 rs.; (No. 21/2) - - - - - - - - -	50 8 –
	Afterwards attending at the Advocate-general's on consultation, when he advised that the plea of Russomoy Dutt should be amended; four hours - - - - - - -	10 – –
	May 25th. Attending client informing him thereof, and receiving instructions to apply for an order to amend the plea - - - - - - - - -	2 8 –
	May 26th. Attending clerk of the papers' office, obtaining a certificate if no replication filed to the plea of Russomoy Dutt, and paid 15 annas - - - - - -	1 15 –
	Drawing and engrossing petition for leave to amend the plea, amending the plaintiff's office copy thereof gratis; fols. 3; (No. 22) - - - - - - - - -	4 8 –
	Attending before judge presenting petition and obtaining order, and paid 2 rs. 13 a. - - - - - - - - -	5 5
	Attending clerk of the papers' office filing same, and paid 2 rs. 13 a. - - - - - - - - -	3 13 –
	Drawing instructions to the Advocate-general to amend the plea - - - - - - - - -	1 – –
	Attending him therewith, and paid him fee 16 rs., when he amended the plea; (No. 23) - - - - - -	18 8 –
	Attending clerk of the papers' office amending the plea, and paid 3 rs. 12 a. - - - - - - - - -	4 12 –
	Attending bespeaking and obtaining rule to reply, and paid 1 r. 14 a. (No. 24) - - - - - - - - -	2 14 –

(continued)

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Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

S. Rs. a. p.	1840:	Sa. Rs. a. p.
	May 26th. Seal and attendance thereon	1 15 –
	Copy and service thereof on Mr. Shaw; fols. 2	3 8 –
	May 27th. Attending Mr. Shaw obtaining his office copy plea to amend	2 8 –
	Attending clerk of the papers' office amending same, and paid 3 rs. 14 a. 9 p.	4 14 9
	Attending Mr. Shaw, returning his office copy plea amended	2 8 –
	June 25th. Attending receipt of a letter from Mr. Brietzike, requesting me to bring this case for decision before the court as soon as possible, as many actions were pending in the court of requests against executors, and which could not be decided until the judgment of the court was passed in this case, and answering; (No. 25)	2 8 –
	June 29th. Attending receipt of a notice from Mr. Shaw, demanding a joinder in demurrer on this case	2 8 –
	Attending clerk of the papers' office, bespeaking and obtaining office copy similiter, and office copy demurrer, and paid 3 rs. 10 a. 11 p.	5 10 1
	Drawing and engrossing joinder in demurrer; fol. 1; (No. 26)	2 8 –
	July 2d. Attending clerk of the papers' office filing same, and paid 1 r. 14 a.	2 14 –
	Paid clerk of the papers for searching plea, and attending prothonotary therewith	1 14 –
	Drawing and engrossing notice of joinder in demurrer filed; fol. 1; (No. 27)	2 8 –
	Copy and service thereof on Mr. Shaw; fol. 1	3 – –
	July 4th. Attending receipt of a letter from Mr. Shaw, requesting me to consent to setting down the demurrer for Thursday next, and answering; (No. 28)	2 8 –
	July 7th. Attending receipt of a long letter from Mr. Brietzike, requesting me to have this case brought to a close as soon as possible, and answering; (No. 29)	2 8 –
	July 9th. Attending the Advocate-general, conferring with him on this case, when he wished to see the letter of the Court of Directors to the Government, dated in January 1753, containing instructions for the proceedings of the court of requests	2 8 –
	Writing a letter to client for the same, and attending receipt of his reply forwarding a copy thereof, and referring me to the government records for the original thereof	2 8 –
	July 10th. Writing a letter to Mr. Bushby, secretary in the General Department, for the original letter	2 – –
	July 11th. Attending at Mr. Bushby's office conferring with him, when the letters could not be found	2 8 –
	Perusing pleadings to prepare brief	3 – –
	Making two copies of briefs for counsel, fols. 88 each; (No. 30)	88 – –
	Attending Mr. Advocate-general with one copy, and paid him fee, 64 rs.	66 8 –
	Attending Mr. Clarke with the other copy, and paid him fee, 48 rs.; (No. 31)	50 8 –
	Making two copies of demurrer book for Sir John Grant and Sir H. Seton; fols. 88 each	88 – –
	Attending Sir John Grant's clerk with copy, and paid 1 r. 14 a.	2 14 –
	Attending Sir H. Seton's clerk with the other copy, and paid 1 r. 14 a.	2 14 –
	July 20th. Attending Messrs. Turton and Clarke severally, fixing time for consultation	5 – –
	Paid Mr. Turton consultation fee	48 – –
	Ditto Mr. Clarke - ditto	48 – –
	Attending on cause, when the Advocate-general directed me to go personally to thecourt of commissioners and see if I could not get certain directions given them by government when the court was first established; four hours	10 – –
	Attending the court of commissioners searching for such directions, and after some trouble discovered them, and attending counsel therewith, and conferring with them thereon; four hours	10 – –

No. 4. Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

S. Rs. a. p.	1840:	Sa. Rs. a. p.
	July 21st. Attending court, when the demurrer was argued at great length, and allowed, with costs; four hours - -	10 – –
	Paid prothonotary - - - - - - - - - -	3 12 –
	Ditto crier - - - - - - - - - -	—
18 4 –	Attending receipt of a letter from Mr. Shaw, requesting to know if my client would now make any reparation to his client for his illegal conduct, and if not, that he would set down the cause to assess damages, &c. - - - - -	2 8 –
	Making a copy thereof; fols. 2 - - - - - - -	1 – –
	Writing to client therewith - - - - - - - -	2 – –
	July 22d. Attending receipt of a letter from a client, requesting I would make a full and explanatory report of this case; (No. 33) - - - - - - - - - - - -	2 8 –
	July 24th. Writing a long letter to client, containing my report of this case, as requested - - - - - - -	2 – –
	July 27th. Attending receipt of a long letter from Mr. Shaw, requesting to know if my client would or would not make a reparation to his client; (No. 34) - - - - - -	2 8 –
	Making a copy thereof; fols. 2 - - - - - - -	1 – –
	Writing to client therewith - - - - - - - -	2 – –
	August 26th. Attending client, conferring, and receiving instructions to submit the correspondence had with Mr. Shaw to the Advocate-general for his advice as to a compromise of this action, and receiving instructions for such case; 2 hours; (No. 6) - - - - - - - - - - -	5 – –
	Drawing and engrossing such case; fols. 12; (No. 35) - -	13 8 –
	Attending Mr. Turton therewith, and paid him fee, 48 rs. -	50 8 –
	September 7th. Attending receipt of the case back from Mr. Advocate-general, with his opinion thereon - - - -	2 8 –
2 8 –	September 28th. Making a copy of the opinion, fols. 3, at client's request - - - - - - - - - -	1 8 –
	Attending client therewith, and conferring with him thereon, when he promised to send the opinion to government, for orders thereon - - - - - - - - - -	2 8 –
	October 15th. Attending receipt of a letter from client, forwarding a copy of the resolution of government offering a compromise of his action on payment of 200 rupees to the plaintiff for damages, and requesting me to communicate with Mr. Shaw on the subject; (No. 36) - - - - -	2 8 –
	Writing a letter to Mr. Shaw, offering 200 rupees for damages and the costs of this action - - - - - - - -	2 – –
	October 17th. Attending receipt of a letter from Mr. Shaw, in reply to mine of the 15th instant, declining to accede to our terms, and requiring 500 rupees for damages and the costs -	2 8 –
	Making a copy thereof; fols. 2 - - - - - - -	1 – –
	Writing a letter to client therewith, for instructions - -	2 – –
	October 21st. Attending client, conferring, and receiving instructions to move for a rule Nisi to pay 200 rupees for damages, in court, together with the costs of this action -	2 8 –
6 8	Attending Moodoosoodun Bose and Bissessur Bonnergea, the seal sirders of the court of requests, taking instructions for their joint affidavit, as grounds of the application; 2 hours -	5 – –
	Drawing and fair copying such affidavit; fols. 13; (No. 37) -	14 8 –
	Making a copy of my letter to Mr. Shaw of the 15th instant, and of his reply; fols. 3 - - - - - - - -	1 8 –
	Attending Mr. Advocate-general therewith and with the affidavit, and paid him fee, 32 rs. - - - - - - - -	34 8 –
2 8 –	November 4th. Attending receipt of the draft affidavit settled by that Advocate-general, with several alterations, and his opinion thereon - - - - - - - - -	2 8 –
	Engrossing affidavit; fols. 13 - - - - - - -	6 8 –
	November 6th. Attending prothonotary's office, bespeaking and obtaining office copy, minutes of judgment on demurrer, and paid 1r. 8a. 4p. - - - - - - - - - -	2 8 4

No. 4.
Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

S. Rs. a. p.		Sa. Rs. a. p.
	1840:	
	November 7th. Attending the deponents on their joint affidavit, explaining, and getting same signed by them - -	2 8 –
1 8 –	Attending before judge, getting them sworn thereto, and paid 4rs. - - - - - - - - - - - -	6 8 –
	November 10th. Drawing special motion paper for the application; fols. 2 - - - - - - - - - -	2 8 –
	Attending the Advocate-general, and with the affidavit and minutes of judgment, and paid 16rs; (No. 38) - - -	18 8 –
	Attending court when motion made and rule Nisi granted -	2 8 –
	Paid prothonotary for minuting motion filing grounds - -	4 11 –
	Paid reading clerk for reading grounds - - - - -	– 15 –
	November 11th. Attending obtaining rule Nisi, and paid 3rs. 4a. 6p. - - - - - - - - - - -	4 4 6
	Seal, and attendance thereon - - - - - - -	1 15 –
	Copy, and service thereof on Mr. Shaw; fols. 4 - - -	4 8 –
– 2 –	Copy to keep; (No. 39) - - - - - - - -	2 – –
	November 12th. Drawing and engrossing affidavit of service of rule Nisi; fos. 2; (No. 40) - - - - - - -	3 8 –
	Attending before judge, swearing same, and paid 2rs. - -	4 8 –
	Making a brief of the rule Nisi, and grounds for the Advocate-general to make same absolute; fols. 19 - - - - -	9 8 –
	Attending the Advocate-general therewith, and paid him fee 32rs. (No. 41) - - - - - - - - - - - -	34 8 –
	Attending receipt of notice of trial from Mr. Shaw for the sitting; (No. 42) - - - - - - - - -	2 8 –
	Writing a letter to client informing him thereof - - -	2 – –
	November 13th. Attending client, conferring and advising	
4 – –	with him, and receiving instructions for case and proof; 4 hrs.	10 – –
	Drawing case and proof; fols. 14; (No. 43) - - - - -	8 8 –
	Making two copies thereof for counsel; fols. 14 each - -	14 – –
	Attending Mr. Advocate-general with his brief, and paid 96rs.; (No. 44) - - - - - - - - - - - -	98 8 –
	Attending Mr. Clarke with his brief, and paid 80rs.; (No. 45)	82 8 –
	November 14th. Attending of a long letter from Mr. Shaw proposing certain terms for the settlement of this action, and perusing; (No. 46) - - - - - - - - - -	2 8 –
	Making a copy thereof; fols. 4 - - - - - - -	2 – –
	Writing a letter to client therewith - - - - -	2 – –
	Making a copy of the letter for the Advocate-general; fols. 4 -	2 – –
	Attending him therewith and conferring thereon - - -	2 8 –
	November 18th. The usual charges for a subpœna ad teste to five witnesses, not sealed or served; (No. 47) - - -	5 7 –
	Attending court when the rule Nisi was argued at great length, and after much discussion it was discharged - - -	5 – –
	Attending informing client thereof, and advising - - -	2 8 –
	Paid prothonotary for minuting motion filing grounds - -	5 10 –
	Paid clerk of the papers - - - - - - - -	– 15 –
	Ditto crier - - - - - - - - - - - -	– 15 –
	Attending receipt of a letter from Mr. Shaw, informing me that he had struck out the cause from the board, and agreeing to accede to the terms proposed by us; (No. 48) - - -	2 8 –
	Making a copy thereof, fols. 2, and attending writing to client therewith - - - - - - - - - - - -	3 – –
	November 21st. Attending receipt of the draft order of the 18th instant from the prothonotary for my approval - - -	1 – –
	Making a copy thereof for the Advocate-general's approval; fols. 7	3 8 –
	Attending him therewith, and paid 16rs. - - - - -	18 8 –
2 8 –	November 22d. Attending receipt of the draft order back from Mr. Turton, with alteration - - - - - -	2 8 –
	Attending the prothonotary therewith - - - - -	1 – –
	November 25th. Attending receipt of a copy of the draft order from the prothonotary, as settled by Mr. Shaw; (No. 50) -	1 – –
	Making a copy thereof for the Advocate-general; fols. 7 -	3 8 –
	Attending Mr. Advocate-general therewith and with the copy order settled by him, when he made a few alterations thereon	2 8 –
	Attending the prothonotary therewith, returning same - -	1 – –

No. 4. Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

S.R. a. p.		Sa. Rs. a. p.
	1840:	
	December 14th. Attending receipt of a copy summons from Mr. Shaw for Wednesday next to tax his costs, under the minutes of judgment of the 21st July last; (No. 51) - -	2 8 –
	December 15th. Attending at the taxing-officer on taxation of Mr. Shaw's bills - - - - - - - - -	2 8 –
	December 19th. Attending receipt of a copy allocatur from Mr. Shaw - - - - - - - - - - -	2 8 –
	Attending informing client the amount thereof, and requesting him to pay the same - - - - - - - - - -	2 8 –
	December 20th. Attending client when he brought me the amount, and giving receipt for same - - - - - -	2 8 –
	Attending Mr. Shaw with the amount and obtaining his allocatur receipted - - - - - - - - - -	2 8 –
	Bill of costs - - - - - - - - - -	5 – –
	Attending the taxing-officer therewith - - - - - -	1 – –
	Paid him - - - - - - - - - - -	4 11 –
	Attending on taxation - - - - - - - - -	2 8 –
	Paid for taxation - - - - - - - - - -	15 – –
	Summons and oath - - - - - - - - -	2 13 –
44 – 4	*Sa. Rs.*	1,563 6 –
a'		1,667 9 6
47 3 2		47 3 2
	Co.'s Rs.	1,620 6 4

I allow of this bill between attorney and client, the sum of Company's rupees 1,620, 6 annas and 4 pice.

8 February 1841.

(signed) *Rd. Vaughan,*
Taxing Officer.

(signed) *C. W. Britzike,*
Commissioner.

No advance,
(signed) *J. B. Swinhoe,*
Defendant's Attorney.
23 January 1841.

Registered, No. 789,
New Book

In the Supreme Court of Judicature at Fort William in Bengal.

Plea Side.

William Anderson v. *Russomoy Dutt and Others.*

(No. 1353—E.)

I have taxed the costs of the plaintiff in the above cause, between party and party, under a Minute of Court, bearing date the 21st day of July 1840, and do allow the sum of Company's rupees 654 and 3 annas.

Dated this 16th day of December 1840.

W. D. Shaw,
Plaintiff's Attorney.

(signed) *R. Vaughan,*
Taxing Officer.

Received payment.

(signed) *W. D. Shaw.*

Pay.

(signed) *J. B. S.*

(signed) *C. W. Britzike,*
Commissioner.

No. 4.

(No. 41.)

Jud. Cons. 22 March 1841. No. 3.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Judicial.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 324, dated the 2d inst., with its enclosures, and in reply, to convey the approval of the Governor-general of India in Council to the sanction granted by the Right honourable the Governor of Bengal for the payment of costs in the action of trespass instituted by Mr. Anderson against the Commissioners of the court of requests in Co.'s Rs. 2274. 9. 4.

2. The original enclosures received with your letter are returned herewith.

I have, &c.

Council Chamber, 22 March 1841.

(signed) *T. H. Maddock*,
Secretary to the Government of India.

(No. 978.)

Legis. Cons. 26 July 1841. No. 5.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India in the Legislative Department.

Judicial Dep.

Sir,

WITH reference to my letters of the 25th August 1840, and 2d March last, on the subject of the effect on the jurisdiction of the court of requests of the decision of the Supreme Court, in the case of Anderson *v.* Russomoy Dutt and others, I am directed by the Right honourable the Governor of Bengal to forward, in order that it may be considered by the Supreme Government, a memorial on the subject, which has been presented to his Lordship by Mr. N. Grant; and to add, that his Lordship is credibly informed that the present state of the court of requests, arising out of the decision in the case in question, is productive of serious inconvenience to the people of Calcutta, and deserves to be remedied as speedily as may be possible. His Lordship would earnestly recommend the Governor-general in Council to give an early attention to this matter, in which further delay does not appear to be just to a large population, or creditable to the Legislature.

I have, &c.

Fort William, 24 June 1841.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Legis. Cons. 26 July 1841. No. 6.

From *N. Grant*, Esq. to the Right honourable Earl *Auckland*, K.C.B. Governor of Bengal.

Enclosure.

My Lord,

THE present imperfect constitution and jurisdiction of the Calcutta court of requests, which it is the purport of this letter to bring to your notice, will, I trust, be deemed sufficiently important to merit your Lordship's attention.

I address your Lordship in the character of a private sufferer, but under a public grievance, and I therefore come forward as one of the many for the common benefit of all who are, or are likely to be, sufferers, if the evil under which I have suffered be not remedied. In that spirit I am encouraged to hope that the case which I shall describe will be considered, not with reference to the petty injury which it has done to me as an individual, but with reference to the evil which it involves to the injury of a large class of the inhabitants of this city and its environs.

The case to which I solicit your Lordship's attention is simply this:

I some time back placed with Mr. Lepage, a bookseller and commission-agent of this city, certain books on commission sale, to be sold by him at certain fixed prices. In direct contravention, however, of my instructions, and therefore in breach of his duty as agent, Mr. Lepage sold certain of these books at prices much under those so fixed by me; and I therefore objected to his account sale, and demanded payment of the difference between the prices at which he had taken upon himself to sell and those which it was his duty to have realized on the

No. 4.
Establishing a Court of Subordinate Civil Jurisdiction in Calcutta.

the books in question. My demand, however, was refused, and Mr. Lepage paid over the mere amount which he had received on the improper sale of the books, less his commission charges, thus leaving a disputed balance of about 37 rupees due in my favour; and viewing the transaction as it then stood as one of simple debt, I therefore brought my action for that amount in the court of requests.

That court, however, on hearing the nature of the case, and the objections of the defendant to the court's jurisdiction, on the plea that the case involved a question of damages, declined interference; and the suit was consequently non-suited, leaving me no alternative between an abandonment of my just claim and an expensive suit in the Supreme Court.

This admission of non-jurisdiction I have since been informed was, without doubt, founded on the authority of a recent case in the Supreme Court, W. Anderson *v.* Russomoy Dutt.

Thus denied the justice I had sought in the minor court, I naturally determined upon seeking the realisation of my claim through the higher court, in which alone my remedy remained. On reference, however, to a solicitor of high professional talent and long experience, I was informed that in such a case, involving as it did so trifling an amount as 37 rupees, it would be folly to incur the risk and expense to which a suit in the Supreme Court would subject me, as even under the most favourable circumstances, charges would be incurred, part of which, although successful in the suit, I could not recover; in short, that such charges would assuredly very far exceed the amount for which my suit would be instituted. Thus, my Lord, I am debarred of a just legal remedy in the case of a clear legal wrong. But, under the knowledge of your Lordship's character and government, I am well assured that such a state of the law needs but to be brought to your Lordship's notice to insure a speedy remedy of the evil now existing; and as one of the many sufferers, I deem it my duty thus to bring forward my own case, as an illustration in point; for, to quote the words of an eminent author, "the injustice done to an individual is sometimes of service to the public: facts are apt to alarm us more than the most dangerous principles."

True, my Lord, the sum for which I sued was trifling; but it is for the recovery of every less important demand that the majority of suitors seek the agency of the court of requests; and I therefore confidently trust that the principles of the law, and not the principal of the action, in the case now brought to notice, will form the subject of your Lordship's consideration.

There are thousands within and near this city to whom a single rupee is as much the matter of careful and anxious solicitude as a thousand rupees to the wealthy; and it is such men who, under the want of a cheap court of competent jurisdiction, composed of efficient judges to take cognizance of minor injuries, are too commonly debarred the means of obtaining their just rights whilst trampled on by the dishonest.

In conclusion, I beseech your Lordship to give to the subject of this letter that attention which its importance demands, and to remedy the public evil of which I have complained, by making such alterations and improvements in the present constitution of the court of requests as to your Lordship may seem necessary.

Though I address your Lordship thus singly, I am well assured that there are hundreds who, if called on, would unite in the entreaty conveyed in this letter.

I have, &c.

(signed) *N. Grant.*

Creek-row, Wellington-square,
Calcutta, 22 June 1841.

MINUTE by the Honourable *A. Amos*, dated 26 January 1841.

Legis. Cons. 26 July 1841. No. 7. Calcutta Court of Requests.

I THINK the Council are aware, that if a law is wanted for the court of requests, according to the most eligible of the two or three schemes which are most deserving of consideration, the whole matter might be disposed of in a fortnight, and might have been so disposed of in any fortnight during the last three years. But then a report from the Law Commission must have been dispensed with.

I am satisfied that the Commissioners devote a great deal of time and laborious attention to their duties, though it must necessarily happen that they are subject to many avocations, upon committees, examinations, &c., to which they are the more frequently invited, from their experience and standing, and from the circumstance that their duties do not call for executive acts not admitting of delay.

I believe

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I believe that some of us, from an anxiety to become acquainted with all information bearing upon subjects, take up a great deal more time than is consistent with any early call for our opinions; perhaps also we are sometimes too solicitous about sending reports which may deserve great respect on their own account, rather than serving merely the purpose of practical suggestions, the ability of which cannot be generally appreciated.

If the Council want immediately a scheme for a court of requests, I have always said that I only require a day's notice to lay several before them, which may deserve their consideration.

If they wish to wait for a report from the Law Commission, and at the same time think that the subject is more pressing than the Madras Judicature Report (for the other matters before the Commission are decidedly of less moment), they had, perhaps, better write to this effect, viz. "that it has become necessary to modify the court of requests, and an Act for the purpose cannot be delayed beyond the next month. The Council is anxious for the opinions of the Law Commission; but in order that they may be of practical use, it is wished that they be forwarded to Council before the middle of the next month."

(signed) *A. Amos.*

Legis. Cons. 26 July 1841. No. 8. Court of Requests.

MINUTE by the Right honourable the Governor-general, dated the 28th June 1841.

I AM strongly of opinion that no further delay should be allowed in this matter, and I would ask Mr. Amos at once to lay before us a draft of Act for removing the disabilities under which the court of requests at present labours, and for extending its jurisdiction, an object to which I attach much importance, as far as can prudently and usefully be done. Such a scheme would include a provision for a single process and examination of parties, the appointment, if thought necessary, of a limited number of jurors, with a ready appeal to the Supreme Court.

(signed) *Auckland.*

Legis. Cons. 26 July 1841. No. 9. Calcutta Court of Requests.

MINUTE by the Honourable *A. Amos*, dated 30th June 1841.

I HAVE prepared a draft Act, which, I think, raises all the important questions incident to the subject, so that I think the Act, after the maturest consideration, will chiefly consist of modifications of the clauses here given.

The points for consideration are:—

1. What limitation of jurisdiction is to be imposed with respect of the species of suits?
2. What in respect of the money amount recoverable?
3. Is the jurisdiction of the court to extend into the suburbs?
4. Is any and what legal assistance to be given to the court? a very important question as regards expense, and to be viewed in connexion with the circumstance, that any material extent of jurisdiction must be attended with an influx of barristers.
5. In what cases is an appeal to be allowed to the Supreme Court?
6. Is a jury, or any modification of a jury, to be admitted?
7. What is to be the procedure in the court below, and what in appeals?
8. What provisions are to be made for fees of court, and what for costs?

As far as I am aware these points include the most important features of the whole subject. I have cut the knot of every one of them; but I have been much more anxious in the present emergency to present rules which should embrace every question, and which may be modified or expunged in Council, after further consideration, than to create more delay by deliberating about what kind of rules I should present.

I incline to think that it is the intention of the Law Commissioners to recommend a subordinate court, of which the principal judge shall be a barrister, and which shall try every species of cause, and to any amount, subject to an appeal in all cases to the Supreme Court. The process to be more simple than that of the Supreme Court, and assessors, in the nature of jurymen, be summoned.

I first drew the present draft so as to extend to all cases under 10,000 rupees, the amount where appeals to the Privy Council commence; but on conference I have

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I have reduced the amount, as will be found in the draft. If there should be other suits, not for goods sold, wages, or rent, which ordinarily are free from legal difficulties, they will be properly included with suits for those matters, provided it be thought expedient to draw a distinction as to appealable and non-appealable cases, and to rest that distinction on the species of cases as well as the amount in dispute.

Some more definite rules as to fees, costs, and procedure before, at, and after trial, and on appeal, will doubtless be suggested, on our application, by the judges of the Supreme Court, and by the Commissioners; it may be desirable to make the Act somewhat more specific as to these details.

Having said thus much of the draft, I will add a few words on the general subject. The confusion which has arisen is owing to the common cause of legal confusion in India, viz. that authorities, from a desire to do abstract justice, have stepped beyond the clear line of their jurisdiction. After these illegal precedents have been followed for many years, their being suddenly arrested creates much more inconvenience than if they had never been made, for then a legal remedy would have been applied, without the public being deprived of any advantages it had enjoyed.

In extending the jurisdiction of the court of requests, it is necessary to guard ourselves against the current of public opinion, that we shall be at least administering cheaper justice. There are, I think, limits within which this opinion is correct, but I think they are more narrow than is generally supposed. A very slight extension of jurisdiction calls for an appeal, if not also an assessor, and perhaps a jury. These must increase the expenses of a petty court suit; but then it may be said the small pay of the judges and officers, the very simple form of pleading, the examination of parties, will still maintain a great disparity between the expenses of the supreme and petty court. On the other hand, I am not sure that in many causes the want of more specific pleadings, and the examination of parties, may not increase the ultimate expense. But there remains this important consideration, that the fees of the Supreme Court are a very small item in the expenses of a suit. The fees of barristers and attornies are the main causes of expense. Now before a comparatively weak court, certainly before a jury, and especially in the cross-examining and re-examining of plaintiffs and defendants, the advantages of employing counsel will be increased beyond measure in every case where the stake considerably exceeds either in importance or pecuniary amount the limits of the present jurisdiction of the court of requests. The examination of parties, and the latitude of proof incident to simple forms of pleadings, though the former may now and then cut short a case, will probably, on the whole, both contribute to prolong trials to a most inconvenient extent.

(signed) *A. Amos.*

AN ACT for Modifying and Extending the Jurisdiction and Powers of the Calcutta Court of Commissioners for the Recovery of Small Debts.

Legis. Cons. 26 July 1841. No. 10.
Enclosure.

1. It is hereby enacted, that, subject to the limitations hereinafter mentioned, the court of commissioners for the recovery of small debts within the town of Calcutta shall have jurisdiction of all suits for the recovery of debts or damages, where the demand is less in amount than 1,000 rupees.

2. And it is hereby enacted, that any one of the commissioners shall constitute a sufficient court for the trial of all cases where the demand does not exceed 500 rupees, and that where the demand exceeds such amount two commissioners at least shall be necessary for the decision of the case.

3. And it is hereby enacted, that where the amount recovered in any suit shall exceed 500 rupees, or shall be for any demand other than a debt by simple contract for goods sold, wages, or for rent, an appeal, if made within a week, shall lie to Her Majesty's Supreme Court at Calcutta, or to any judge of such court in vacation.

4. And it is hereby enacted, that Her Majesty's Supreme Court aforesaid, upon a case being appealed, may at its discretion decide the appeal in full court, or direct the same to be decided by any judge of the Supreme Court, and in either case the suit may be determined both according to the rules of courts of law and of courts of equity, and the court or judge may call for any further documents or witnesses

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witnesses to be produced before such court or judge, although the same may not have been produced before the commissioners, and shall make a final decision accordingly, and shall remit the judgment to be executed by the inferior court.

5. And it is hereby enacted, that it shall be lawful, in all suits appealable to Her Majesty's Supreme Court aforesaid, for the parties to enter into an agreement in writing, to be signed by such parties, and by any one of the commissioners aforesaid before whom such agreement may be made, to the effect that the decision of the court of commissioners shall be final between the parties, and such agreement may be made at any period of the suit, and shall preclude an appeal being received by Her Majesty's Supreme Court.

6. And it is hereby enacted, that the jurisdiction of the court of commissioners aforesaid shall include as well the town of Calcutta as all places within the distance of five miles from any part of the same town.

7. And it is hereby enacted, that in proceedings in suits for any amount not exceeding 500 rupees, and being for goods sold, wages, or rent, the forms of proceedings shall be the same as now used before the said court of commissioners; but in suits for any amount exceeding 500 rupees, the plaintiff shall at the time of commencing his suit file in the court of the commissioners a particular statement in writing of his complaint, and the defendant shall file a like statement of the grounds of his defence, within a reasonable time, to be fixed by the commissioners; and after the filing of the above statements the court shall appoint a day for hearing the parties.

8. And it is hereby enacted, that the said commissioners shall from time to time frame rules for conducting all proceedings before them, which rules, after they shall have obtained the sanction of the Governor-general in Council, shall have the like force and effect as if inserted in this Act: provided always, that until such rules be framed and allowed, the proceedings of the said commissioners shall be the same as are now in force, or in cases appealable to the Supreme Court, as near thereto as in the judgment of the said commissioners may appear to be practicable and reasonable.

9. And it is hereby enacted, that it shall be lawful for Her Majesty's Supreme Court to issue such directions touching the transmission of appeals as may appear necessary, which directions shall be observed by the said commissioners and all persons concerned in the said appeals.

10. And it is hereby enacted, that it shall be lawful for the said court of commissioners in any suit before it to state a special case, upon matter of law only, for the determination of Her Majesty's Supreme Court, and Her Majesty's Supreme Court shall determine such case, upon hearing of the parties, and shall remit their decision thereon for the guidance of the said court of commissioners.

11. And it is hereby enacted, that it shall be lawful for the Governor of Bengal, from time to time, to appoint an assessor, who shall be a barrister of not less than five years' standing, who shall be an assistant to the said court of commissioners for the adjudication of such causes, and at such times, and according to such amount of salary as may be deemed expedient; provided, that such assessor be not appointed for any longer period than a month at one time, or at a salary exceeding for one month.

12. And it is hereby enacted, that at the request in writing of either party to a suit before the said commissioners, when the sum demanded exceeds 500 rupees, and is not for goods sold, wages, or rent, it shall be lawful for the said commissioners to summon a jury of six persons for the decision of such questions of fact as the court may submit for their consideration touching the matter in dispute; and for the purpose of procuring the attendance of such jury, the said court of commissioners is hereby vested with all the powers exercised for such purpose by Her Majesty's Supreme Court.*

13. And it is hereby enacted, that the said court of commissioners may allow to the successful party in any suit such costs as it may deem reasonable, and shall for such purpose, from time to time, frame tables of costs and of fees of court, to be allowed by the Governor-general in Council, in like manner as the rules for the conduct of proceedings aforesaid; and in the meantime the said court of commissioners shall adopt the same rules as to costs and fees of court as are now in force in such court, or as near the same as in their judgment is practicable and reasonable.

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* I would omit this clause. (signed) *A. Amos.*

MINUTE by the Honourable *A. Amos*, dated 5 July 1841.

No. 4.

Legis. Cons. 26 July 1841. No. 11.

I HAVE drawn this draft in consequence of my former draft having been supposed to have extended the jurisdiction of the court of requests in some respects too largely; and it was thought that the court should be placed in the same situation in which it practically stood previously to the late decisions. It will be observed that though in some respects the jurisdiction will thus be more limited, viz. in point of amount, yet in regard to the circumstance that an appeal is not given in any species of suit (agreeably to the former practice), the jurisdiction will be more extensive.

This measure might be accomplished by a proclamation; but the advantage of an Act is, that it may be published for information, and the feeling of competent authorities and of the community known, and that suggestions may be received before the measure is finally settled.

My own impression still remains, that except in two or three species of actions, an appeal, if not an assessor, is required; but that with this assistance the limit may exceed 400 rupees.

The present views of the Council appear to rest on the impression, that previously to the late decisions, when the court tried every kind of case under 400 rupees without assessor or appeal (I am not sure that the court abstained even from deciding rights of land), and that by a single judge, justice was satisfactorily administered as far as the court went, and that an extended jurisdiction was not required.

It may be feared that according to this scheme some of the most intricate questions of law and fact, and some of the most important rights, may be determined before the commissioners. Then, I conceive, they are incompetent to decide according to legal rules. They are, however, more likely to decide rightly than wrongly. The commissioners also are more competent judges than various grades of judicial officers, who decide much more important questions in the mofussil. And it is very important to consider whether a defendant may remove any case, during vacation or otherwise, into the Supreme Court by certiorari, (Charter, clause 21, Smoult, p. 25), so that it may be said that both parties voluntarily permit their case to be decided by the commissioners.

(signed) *A. Amos.*

AN ACT for better defining the Jurisdiction of the Calcutta Court of Commissioners for the Recovery of Small Debts.

1. WHEREAS great inconvenience has been sustained by reason of the Calcutta court of commissioners for the recovery of small debts having recently abstained from the decision of divers cases, in which they had ordinarily exercised jurisdiction, but concerning the legality of their jurisdiction over which doubts have lately arisen.

It is hereby enacted, that the court of commissioners for the recovery of small debts within the town of Calcutta shall have legal and equitable jurisdiction in suits of every kind, and by all parties, as well representatives as others, for the recovery of debts or damages, where the sum claimed does not exceed 400 rupees: provided always, that such court shall not determine any right to land or other real property.

2. And it is hereby enacted, that any one of the commissioners aforesaid shall constitute a sufficient court for the adjudication of all cases under this Act.

3. And is hereby enacted, that all the powers with which the said court of commissioners is invested, or to which its jurisdiction is subject, under any statute, Act, Royal charter,* or proclamation heretofore made or passed, shall be extended to suits under this Act.

4. And it is hereby enacted, that all the rules and forms, fees of court, and other matters connected with the process of the said court, which have heretofore been usual in the same, shall be extended to suits under this Act.

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* This, I apprehend, lets in the certiorari. Now, I conceive, a certiorari may be applied for by any defendant immediately after the suit is commenced, and that the Supreme Court would remove the suit on its being shown to them, that though the amount was trifling, the suit involved difficult questions of law; but on this point, and whether a certiorari can be obtained in vacation, it may be proper to make inquiries.

No. 4.

(No. 1079.)

Legis. Cons. 26 July 1841. No. 12.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Judicial Dep.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will lay before the Supreme Council the enclosed letter from the chief magistrate of Calcutta, (No. 253 of the 24th ultimo), together with its accompaniments, relating to the legal boundaries of Calcutta, which subject his Lordship solicits may be taken into consideration in connexion with the papers relative to the court of requests, submitted with my letters, as per margin.

25 Aug. 1840.
2 March 1841.
24th ultimo.

I have, &c.

Fort William, 6 July 1841. (signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 253.)

Legis. Cons. 26 July 1841. No. 13.

From *D. M'Farlan*, Esq. Chief Magistrate, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Enclosure.

Sir,

I HAVE the honour to report that points regarding Abkarree licences have been under discussion at this office, and the present state of the legal boundaries of the town was considered. It was found that Captain Birch's police, passing the legal boundary, took post over the canal.

2. On referring to the proclamation of 1794, (see Act for improving the Administration, published by S. Smith & Co. in 1830) and comparing its directions with the actual condition of the boundary, it appears quite impossible to follow them. Almost the whole of the places mentioned for the northern boundary are now unknown. Robertson's Garden and Jackapore are, I suppose, now unknown. The brook called Chitpore Nullah* is very nearly destroyed; ports or metes, Nos. 1, 2, 3, 4, and 5, are all gone, and the old Powder-mill Bazaar can only be known by some one curious in antiquities.

3. These boundaries were promulgated before the Marquess of Wellesley made the Circular Road, but the promulgation has not been altered. The construction of a canal 10 years ago, has still further altered the physical form of the northern limit.

4. I am very much disposed to ask the government to proclaim anew the boundary thus:—

North.

The west side of the River Hooghly at the point where it is intersected by a line drawn from the south side of the canal at Chitpore Bridge, in the direction of the said canal, from Barrackpore Bridge to Chitpore Bridge, and the south or Calcutta side of the Circular Canal to Barrackpore Bridge over the said canal.

East.

Easternmost limit of the Circular Road, or western edge of Mahratta Ditch.

South.

This is quite indistinct in the present proclamation.

The Circular Road to the Pucka Bridge, west of the General Hospital, and the course of the drain passing under the said bridge to Tolly's Nullah, and thence by the south side of the said nullah to the River Hooghly, and thence across the river to a point met by the line of the said nullah between Kidderpore and Allypore bridges, protracted westward.

West.

On the south by the point cut by the line of the Tolly's Nullah between the Kidderpore and Chitpore bridges, along low-water mark to the point intersected by a line drawn from Chitpore Nullah on the line between the Barrackpore and Chitpore bridges.

5. These

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* Application has recently been made for the occupation of the site of the ditch by the neighbours.

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5. These alterations and definitions would not be of much consequence, were it not very desirable to define the present boundary; since the destruction of the Chitpore Nullah, offences might be committed on the boundary, the precise locality of which it would be very difficult to settle. When the Circular Canal was dug, much of the earth excavated from the Chitpore portion of it, went to fill up the old Mahratta ditch or Chitpore Nullah: a tunnel on its side was indeed made for a portion of the drainage that used to pass through it, the rest going into the canal; but that is now clearly closed and almost forgotten. A little to the east the tunnel ceases, and the same difficulty arises. The limit had better be extended at once to the canal; this would take in a very small tract only, the boundary might remain as at present from Barrackpore Bridge.

6. Halsye Bagaun is now in the town, though on the east side of the ditch. I would recommend its being made over to the Twenty-four Pergunnahs.

I have not, in the present paper, taken any notice of the general point, viz. the desirableness of any distinction at all, nor of the advantages of bringing the General Hospital or the European Lunatic Asylum within the town limits. I only say that so long as the law is as it now is, and different systems and different tribunals prevail on two sides of the boundary, it is very desirable that that boundary should be clear and defined. I referred this letter to the magistrate of the Twenty-four Pergunnahs; his answer is annexed.

I have, &c.
(signed) *D. M'Farlan*,
Chief Magistrate.

Calcutta Police-office,
24 June 1841.

P.S.—A plan of the town also accompanies.

(No. 483.)

From *R. Torrens*, Esq. Magistrate, Zillah Twenty-four Pergunnahs, to *D. M'Farlan*, Esq. Chief Magistrate of Calcutta.

Sir,

I HAVE the honour to acknowledge your letter, dated the 9th instant, with a plan of Calcutta, and copy of the Government proclamation regarding the boundaries of Calcutta, which I return.

2. In reply, I beg to say that I can find no records here on the subject.

I am, &c.
(signed) *R. Torrens*,
Magistrate.

Zillah Twenty-four Pergunnahs,
23 June 1841.

(True copy.)
(signed) *D. M'Farlan*,
Chief Magistrate.

(No. 46.)

LIMITS OF THE TOWN OF CALCUTTA.

Legis. Cons. 26 July 1841. No. 14. Enclosure.

READ again a Letter from Mr. *Addison*, Clerk to the Court of Requests, dated the 31st March 1794, and recorded on the 7th instant.

A QUESTION, relative to the limits of the town of Calcutta, being now brought before the Governor-general in Council, he determines to avail himself of the power vested in him by the 159th section of the Act of 33d of his Majesty Geo. 3, c. 52, for defining, ascertaining, describing and establishing the boundaries of the said town.

The Mahratta ditch, as far as it can be ascertained, has hitherto been deemed the boundary of the town, and the questions which have arisen relating to the boundaries, have had a reference chiefly, if not entirely, to the space included between the point where the Mahratta ditch is discontinued into Tolley's Nullah. The continuation of this boundary, therefore, through this space requires to be particularly ascertained and defined.

The Governor-general in Council remarks, that frequent inquiries have been made to ascertain the true limits of the town, as will appear from the Proceedings of and that this subject more particularly engaged the attention of

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of Government in the year 1788, when the establishment of an effective police was under consideration.

Having referred to the above Proceedings to remove any doubt that may be entertained respecting the boundaries in future.

Resolved, that the town of Calcutta shall, to all legal intents and purposes, extend to and be bounded by the several lines, limits, and boundaries following; viz.

North Boundary.

That the said city or town of Calcutta shall be bounded on the north side thereof by a line commencing at a point on the west side of the River Hooghly, commonly called and known by the name of Colonel Robinson's Garden, or Jackapore, exactly opposite to the mouth of the brook called Chitpore Nullah or Bang Bazar Nullah, which line being drawn across the river from the aforesaid point to the south corner of the mouth of the nullah, shall be continued to the eastward along the south side of the said nullah, by the south end of the bridge called Chitpore Bridge, and so on eastward along the south side of the said nullah and the Mahratta entrenchment until it turns at Nunderam Sein's Bun.

Passing the old Powder Mill Bazar until it reaches the foot of the bridge leading to Dum Dum.

East Boundary.

The eastern boundary shall be a line traced along the west side of the Mahratta ditch or entrenchment, and the east of the road adjoining to the same, including a garden called Haulsee Bagaun, and from thence continuing towards the south as far as the remains of the said entrenchment are visible, by the side of the road to the southward along the eastern side of the Boytoconnah road, passing through Mirzapoor, leaving the Portuguese burying-ground to the east and the Boytocaconnah bazar to the west side thereof, thereby including within the limits of Calcutta the Protestant burying-ground, Chowringhee, and the lands thereunto belonging called Dhee Birjee, and continuing to the southward until the point or turning of the road towards the west, leaving Dhee Sreerampore on the east and south-east.

South Boundary.

From the above point the southern boundary of the town shall commence, and shall continue to the westward with a little inclination to the south, excluding Dhee Chuckerbeer, and including Bunia Poker, otherwise called Arreapoker and Birjea Talao, until the road or line meets the Govindpore Kall, otherwise called Tolly's Nullah at Allipore Bridge, which line shall be so drawn as to exclude the General Hospital for Insane, and the hospital burying-ground, passing on westerly until it meets Allipore Bridge as aforesaid.

From the south side of the bridge it shall be continued along the south side of the nullah at high-water mark, passing the foot or south end of Salmon's Bridge, and extending to the mouth of the said nullah, where it enters the River Hooghly, excluding Watson's Dock, and then from east to the west, across the river to the south-east point of Major Kyd's Garden, to the exclusion of the same, and adjoining to the village of Sheebpore.

West Boundary.

From the above point the western boundary shall commence, and proceed to the north at low-water mark, along the west side of the River Hooghly, excluding the ghauts of Ramkissenpore, Howrah and Sulkea, until it reaches the northern point of Colonel Robinson's Garden, or Jackapore aforesaid, opposite Chitpore Bridge.

The boundaries above decribed are clearly and definitely laid down in the map of Calcutta and its environs, lately published by Mr. Upjohn, which survey, made by the chief engineer, is found to be accurate.

* Agreeably to what he understands to be the ancient boundaries of the town.

The Governor-general in Council having thus defined what is proposed shall be the limits of Calcutta in future,* thinks proper, previous to a final determination upon them, and publication thereof, to direct that a copy of the above resolutions be sent to Mr. Tiretta, the civil architect, with directions to place temporary landmarks at the different points therein described, until they can be made of stone and permanently fixed, marking the several positions in the map prepared by Mr. Upjohn, that the names of them may be ascertained and defined with all possible accuracy.

With numbers upon each, fixing No. 1 at the south corner of Chitpore Nullah.

Ordered, that the collector of Calcutta, direct such of his officers as are well informed to attend Mr. Tiretta.

Legis. Cons. 26 July 1841. No. 15. Enclosure.

PROCLAMATION.

WHEREAS in and by the 159th sec. c. 52, of an "Act passed in the 33d year of his Majesty's reign, intituled "An Act for continuing in the East India Company, for a limited time, the Possession of the British Territories in India, together with their exclusive Trade, under certain Limitations; for establishing further Regulations

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lations for the government of the said Territories, and the better administration of Justice within the same; for appropriating to certain uses the Revenues and Profits of the said Company, and for making provision for the good order and government of the Towns of Calcutta, Madras, and Bombay;" it is enacted that "If any question shall arise touching or concerning the true limits and extent of the said towns and factories, or any of them, the same shall be inquired into by the Governor-general in Council at Fort William, in respect to the limits and extent of Calcutta, and by the Governor in Council of Fort St. George, in respect to the limits and extent of Madras, and the Governor in Council at Bombay in respect to the town of Bombay; and that such limits as the said respective governments, by order in Council, shall declare and prescribe to be the limits of the said towns and factories respectively, shall be held, deemed, and taken in law as the true limits of the same, any custom or usage to the contrary notwithstanding."

And whereas such question as in and by the said clause of the said Act is meant and referred to, has arisen, and been made with respect to the limits of the said town of Calcutta; and the Governor-general in Council, in pursuance of the authority vested in him by the said Act, has inquired into the same, and by an order, duly made in Council, has declared and prescribed the limits of the said town, and has directed and commanded the same to be publicly, in order that the said limits, so declared and prescribed, may be known to the inhabitants of the said town, and to all persons whom the same may in anywise concern, it is hereby publicly notified that the town of Calcutta, in respect to all legal intents and purposes, extends to and is bounded by the several lines, limits, and boundaries hereinafter mentioned and described, that is to say,

The Northern Boundary

is declared to commence and does accordingly commence on the west side of the River Hooghly, at the post or mete No. 22, situated on the north point of Colonel Robertson's Garden, called Jackapore, immediately opposite the mouth of the brook called Chitpore Nullah or Bang Bazar Nullah; and the said northern boundary is from thence declared to continue and is continued accordingly by a line drawn across the river from the aforesaid point to the south corner of the of the mouth of the said nullah, unto the post or mete No. 1, near the foot of the Chitpore Bridge, and from thence by a line drawn easterly, and passing the south end of the said bridge, to No. 2, and from thence along the south side of the said nullah or brook to the post or mete No. 3, and thence on to the post or mete No. 4, passing the Old Powder Mill Bazar, until it reaches the foot of the bridge leading to Dum Dum, where the post or mete No. 5 is.

The Eastern Boundary

is declared to commence and does accordingly commence at the said post or mete No. 5, and is declared to continue and does accordingly continue by a line traced along the west or inner side of the Mahratta ditch or entrenchment, and the east side of the road adjoining thereunto, until it reaches the post or mete No. 6, at the northern angle next to the road of an enclosure called Haulsee Bagaun, which said Haulsee Bagaun is included within the town of Calcutta, and from the said northern angle by a line drawn eastward along the northern side of the ditch or trench which encloses the said Haulsee Bagaun, to the post or mete marked No. 6, and from thence southward along the western side of the said ditch or trench to the post or mete also marked No. 6, and from the said last-mentioned post or mete westward, along the northern side of the said ditch or trench until the said line reaches the mark No. 7, where there is a tannah, and from the said last-mentioned post or mete by a line drawn southward, and on the western side of the Mahratta entrenchment and the east side of the Boitaconnah road as far as the remains of the said Mahratta entrenchment are visible to the post or mete No. 8, at the corner of Rajah Ramlochun Bazar, and of the road leading to Baulia Ghaut immediately opposite to Nanain Chatterjies road, and from the said last-mentioned post or mete No. 8, by a line continued in a southern direction passing through Mirzapore and drawn along the eastern side of the Bytaconnah road, and leaving the Portuguese burying-ground to the east until it reaches the Boitakonnah Tree, where the two posts or metes marked respectively Nos. 9 & 10, are fixed on each side of the road opposite to the Bow Bazar road and the Boi-

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taconnah Bazar, and from the last-mentioned post or mete marked No. 10, by a line drawn along the eastern side of the said Bytaconnah road to the post or mete No. 11, opposite to Gopee Baboo's Bazar, which bazar is situated between the Farm Bazar and Dhunumtollah road, and from thence in the same direction until the said line reaches the post or mete No. 12, at the point or turning of the said road towards the west, leaving Dhee Sreerampore on the east and south-east, and thereby including within the limits of Calcutta, the Protestant burying-ground, Chowringhee, and the lands thereunto belonging, called Dhee Birjee.

The Southern Boundary

is declared to commence and and does accordingly commence from the last-mentioned post or mete No. 12, and is declared to continue and does accordingly continue by a line drawn from thence to the westward, with a little inclination to the southward, along the southern side of the public road, excluding Dhee Chuckerbeer, and including Bunneapokar otherwise called Areeapookah in Dhee Birja, until the said line reaches the beginning of the Russapuglah road immediately opposite to Chowringhee high road, where the post or mete No. 13 is fixed; from the said post or mete No. 13, by a line running to the westward along the southern side of the public road to the post or mete No. 14, fixed between the thannah and the General Hospital, and passing on westerly to the post or mete No. 15, at the foot of the Allipore Bridge, and excluding the General Hospital aforesaid, the Hospital for Insane, and the hospital burying-ground, situated in Dhee Boleanepore, and from thence and from the south side of the said Allipore Bridge by a line drawn and continued along the south side of the nullah, commonly called Tolly's Nullah, at high-water mark to the post or mete marked No. 16, and from thence passing the foot or south end of Surmone Bridge, commonly called Kidderpore Bridge, and extending to the mouth of the said nullah, where it enters the River Hooghly, excluding Watson's Dock, and to the post or mete marked No. 17, and then proceeding from east to west across the River Hooghly to the south-east point of Major Kyd's Garden, and excluding the said garden and villages of Sheebpore, at which point a post or mete, marked No. 18, is directed to be fixed: And

The Western Boundary

is declared to commence and does accordingly commence at the said point where the said post or mete marked No. 18 is fixed, and is declared to continue and does accordingly continue from thence by a line drawn at low-water mark along the western side of the said River Hooghly, but excluding the ghauts of Ramkissore, Hunah and Sulka, where posts or metes are fixed, marked respectively Nos. 19, 20, and 21, until the said line reaches the northern point of Colonel Robertson's Garden, or Jackapore, aforesaid, where a post or mete is fixed, marked No. 22, and immediately opposite to the post or mete No. 1, at Chitpore Bridge.

Declared and proclaimed by order of the Governor-general in Council of Fort William in Bengal, this 10th day of September 1794.

(signed) *E. Hay*,
Secy to the Govt.

(No. 100.)

Legis. Cons. 26 July 1841. No. 16.

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary Indian Law Commission.

Sir,

I AM directed by the Right honourable the Governor-general in Council to transmit to you for submission to the Law Commission the papers noted in the margin * connected

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* Judicial consultation, 7th September 1840, Nos. 4 to 6.
Ditto - - - - 22d March 1841, Nos. 1 to 3.
Letter from Secretary Government of Bengal, dated 24th June 1841, No. 978, with Enclosure.
Ditto - - - - ditto - - - - - dated 6th July 1841, No. 1079, with Enclosure.
Minutes by the Honourable A. Amos, Esq., dated 26th and 30th June, and 5th July 1841.
Minute by the Governor-general, dated 28th June 1841.

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connected with the court of requests, for consideration with the subject already before the Commission.

I have, &c.

Council Chamber, 26 July 1841.

(signed) *F. J. Halliday,*
Officiating Secy to the Govt of India.

From *J. C. C. Sutherland,* Esq. Secretary to the Indian Law Commission, to *F. J. Halliday,* Esq. Secretary to the Government of India, Legislative Department.

Legis. Cons. 10 June 1842. No. 9.

Sir,

I AM directed by the Indian Law Commissioners to forward, for submission to the Governor-general in Council, a draft Act for establishing a court of subordinate civil jurisdiction in Calcutta.

2. The report which contains the reasons on which the provisions of this Act are founded is in progress and will shortly be presented.

I have, &c.

Indian Law Commission, 31 July 1841.

(signed) *J. C. C. Sutherland,*
Secretary.

AN ACT for establishing a Court of Subordinate Civil Jurisdiction in the City of *Calcutta.*

Legis. Cons. 10 June 1842. No. 10.

WHEREAS it is expedient that as soon as the necessary arrangements can be made, a College of Justice, consisting of the Judges of the Supreme Court at Fort William, in Bengal, and of the judges of the Sudder Dewanny Adawlut, should be erected for the ultimate decision, as regards India, of appeals from all courts, as well in the city of Calcutta as in the other parts of the presidency of Bengal, and it is expedient that some new provision should be made for the trial of original suits within the local jurisdiction of the said Supreme Court:

And whereas Her Majesty's Supreme Court of Judicature at Fort William in Bengal is not authorised in civil actions at law to examine the parties to such actions, by reason whereof the truth of the case must sometimes be concealed from the said court, or can only become known to it by means of a bill in equity for a discovery, which is a proceeding unnecessarily dilatory and expensive, and much less efficacious for the manifestation of the truth of the case than examination and cross-examination *vivâ voce* in open court:

And whereas the procedure in civil actions in the said court is more dilatory and expensive than is necessary for the ends of justice:

And whereas the jurisdiction of the court of requests for the recovery of small debts in and for the settlement of Fort William is limited to suits brought for the recovery of such debts:

And whereas it is inexpedient that the jurisdiction of the said court of requests should be extended:

It is hereby enacted, that from and after the day of the court of requests for the recovery of small debts in and for the settlement of Fort William in Bengal shall be abolished; and that on the said day a court for the exercise of original civil jurisdiction in the city of Calcutta shall be established, and shall be called the Subordinate Civil Court for the city of Calcutta.

II. And it is enacted, that the said subordinate civil court shall consist of as many commissioners as to the Governor of Bengal shall from time to time seem meet, and that each of the commissioners, sitting separately, shall exercise all the jurisdiction and powers herein conferred upon the said subordinate civil court.

Provided always, that at least one of the said commissioners shall be a barrister of not less than five years' standing.

III. And it is enacted, that one of the said commissioners, being a barrister of five years' standing, shall be the chief commissioner.

IV. And it is enacted, that each of the commissioners shall receive such salary as to the Governor-general in Council shall seem meet, respect being had to the qualifications of each.

V. And it is enacted, that the jurisdiction of the said subordinate civil court shall, both as regards the nature of the matter in dispute and the local situation

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thereof, extend to all matters for which a civil action at law may be brought in Her Majesty's Supreme Court of Judicature, and shall, as regards the persons to be subject thereto, extend to all persons inhabiting or seeking a livelihood within the city of Calcutta; and it shall be lawful for the Governor-general in Council from time to time to extend the local limits of the said jurisdiction by proclamations to be issued for that purpose.

VI. And it is enacted, that the said subordinate civil court shall in every case make such decrees as may be agreeable to equity and good conscience, following such law as the said Supreme Court would have administered if the matter had been brought before it in an action at law.

VII. And whereas it is conducive to the good administration of justice that the respectable part of the public should be associated therein: It is hereby enacted, that the Governor-general in Council may, by proclamation, order that every or any commissioner of the said subordinate civil court, shall in all suits or in any particular class of suits, and in all proceedings therein, or in any particular proceeding therein, sit with one or more jurors.

VIII. Provided always, and it is hereby enacted, that the verdict of such juror or jurors shall be only for the information of the conscience of the court.

IX. And it is enacted, that the manner of commencing a suit in the said subordinate civil court shall be as follows:—

1. Each of the commissioners of the said subordinate civil court shall sit at stated hours for the purpose of receiving plaints.

2. Every plaintiff bringing a suit in the said subordinate civil court shall, except as hereinafter excepted, appear in person before one of the commissioners, and shall, orally or in writing, lay before such commissioner the facts which constitute his claim.

3. The excepted cases in which the plaintiff shall be excused from appearing in person for the purpose of making the statement of facts mentioned in the last clause, are the same as the excepted cases specified in clause 15 of this section; but the plaintiff shall in all cases be permitted to make the statement of facts by an agent, provided he deposits in sum of rupees ——.

4. The sum so deposited shall be held as a security for anything which may be or which may become due to the defendant or to the government in respect of the matter of the suit or in respect of the mode of conducting it; if nothing shall so be or become due, the sum shall be repaid to the plaintiff.

5. If the plaintiff lays the facts before the commissioner orally, the facts, whether stated of his own accord or elicited by examination, shall be reduced into form and written down by the commissioner or by an officer of the court under his direction, and shall constitute the plaint.

6. If the plaintiff lays the facts before the commissioner in writing, the written statement shall be corrected in form by the commissioner, or by an officer of the court under his direction, if it requires such correction; and in substance, if it in any respect disagrees with the statement of facts elicited by the examination of the plaintiff: subject to such correction the written statement shall constitute the plaint.

7. When the statement of facts constituting the plaint has been made, the commissioner, if he is of opinion that the plaint does not contain any cause of action against the defendant, or that the defendant, or the matter of the suit is not within the jurisdiction of the subordinate civil court, shall make a decree accordingly.

8. If the commissioner is of opinion that the plaint contains a cause of action against the defendant, and that the defendant and the matter of the suit are within the jurisdiction of the subordinate civil court, he shall direct a writ of summons to be issued to the defendant.

9. The writ of summons shall contain a copy of the plaint, and an order to the defendant to appear before the court on a specified day, and to bring with him any documents which he may have in his possession, and of which the plaintiff, with the consent of the commissioner, demands inspection, or which he the defendant may think conducive to his defence, and a list of such witnesses as he supposes may be necessary for his defence.

10. If the plaintiff satisfies the commissioner that the defendant is likely to withdraw himself from the jurisdiction of the subordinate civil court, the commissioner may direct a warrant of arrest against the defendant, to be issued together with the rest of summons.

11. If

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11. If the defendant is arrested on the warrant, he shall be brought with all convenient speed before the commissioner, who may discharge him from custody if he gives sufficient security for his appearance, or if he deposits a sum which the commissioner considers, under all the circumstances of the case, sufficient, or if he satisfies the commissioner that he does not intend to withdraw himself from the jurisdiction.

12. On every day on which any of the commissioners shall sit for the purpose of receiving plaints, all the plaints received shall be laid before the chief commissioner, who will distribute them among all the commissioners, including himself.

13. In distributing the plaints, the chief commissioner will endeavour to give to all the commissioners a share of business which will occupy an equal portion of the time of each, and to give to each commissioner those kinds of suits which he thinks each best qualified to decide.

14. Every plaintiff and defendant in the said subordinate civil court shall appear, except as hereinafter excepted, in person on the day specified in the writ of summons, and on every other day fixed for their appearance by the commissioner.

15. A plaintiff or defendant may be excused from appearing in person if ill; if absent from Calcutta; if engaged in the public service; if exempted on account of rank by the regulations from appearing in the courts of the East India Company; if of advanced age; if of the female sex; if there is a co-plaintiff who appears in person; if there is a co-defendant defending jointly with him; if not personally cognizant of the matter in dispute.

16. But in all these cases the commissioner may refuse to hold the party from appearing in person if he is not satisfied that the excuse is made in good faith, and that the matter of the excuse exists in a sufficient degree to justify him in admitting it.

17. Whenever an agent has been admitted in place of a party, such agent shall be permitted to do all that the party might have done had he appeared, and shall be liable to be examined and cross-examined in the same manner.

18. And the commissioner may, if he thinks fit, order that the party excused shall be examined in any way in which a witness may be examined.

19. When the commissioner has refused to hold any party excused, he may order the agent who makes the excuse to summon the party on whose behalf it is made on a specified day, and adjourn the proceedings to that day, or he may make a decree against such party after examining his agent.

X. And it is hereby enacted, that as soon as the plaintiff and defendant are together before the commissioner to whom the suit has been assigned, he shall proceed to take the pleadings, and settle the demurrers and issues of fact.

XI. And it is hereby enacted, that the manner of pleading shall be as follows:

1. The defendant, in answer to questions put by the commissioner, shall confess or deny each of the material allegations contained in the plaint, and shall state any matter whereby he proposes to avoid the plaintiff's right to a decree arising out of such allegations contained in the plaint as he has confessed.

2. The defendant may demur if he thinks the plaint states a case insufficient to entitle the plaintiff to a decree.

3. The defendant shall not be precluded from demurring to any matter in the plaint because he has pleaded to it, nor shall be precluded from pleading to any matter in the plaint because he has demurred to it.

4. The defendant shall not be precluded from denying as many of the allegations in the plaint as he disbelieves.

5. The defendant shall not be precluded from avoiding the plaintiff's right to a decree arising out of any allegations in the plaint which the defendant has confessed, by the statement of as many matters as he disbelieves to be true.

6. The commissioner will take care that, in taking down the pleadings in writing, pleas shall be kept distinct from demurrers, and that no plea shall be double.

7. The commissioners will also take care that the pleadings shall not be argumentative, and shall state matters of fact only, and not evidence of matters of fact; and shall in all other respects be such as to lead directly to distinct issues of law or fact, and that each issue shall have as much particularity as conveniently may be.

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8. All the above rules of pleading shall be applied, as far as they are capable of such application, to the subsequent stages of the pleadings.

9. If, after the demurrers and issues of fact have been settled, a decree can be properly made without further evidence than that of the parties, and without argument on the law or equity and good conscience of the case, the commissioner will make his decree immediately.

10. The plaintiff and defendant may, through the medium of the commissioner, cross-examine each other as to any matter affirmed or denied on either side in pleading.

11. If any demurrer results from the pleadings which the commissioner thinks fit for argument, he will, after consultation with the parties, fix a day for the argument on it.

12. If any issue of fact results from the pleadings upon which it is necessary to hear evidence, the commissioner will make a note of the names of the witnesses on both sides, and of the facts which each of them is expected to prove, and the documents which each of them is expected to produce, and will grant such subpœnas and subpœnas *duces tecum* as appear to him to be necessary for the purposes of justice, and will, after consultation with the parties, fix a day for the taking of evidence.

XII. And it is hereby enacted, that if any commissioner, not being a barrister, perceives, while he is receiving a plaint, or while he is taking the pleadings, or in any subsequent stage, that the suit is one which, in his opinion, ought not to proceed before a commissioner who is not a barrister, he may hand over the suit to the chief commissioner, and direct the parties to go immediately before the said chief commissioner, who shall proceed with the suit.

XIII. And it is hereby enacted, that if it shall appear to the commissioner at any stage of the suit that justice cannot be done without the presence and concurrence of some person not a party to the suit, the commissioner may summon such person to appear, and make a decree which shall be binding upon such person, making such order regarding the costs as shall be agreeable to justice.

XIV. And it is hereby enacted, that if in the course of a suit the parties shall disagree as to the balance of an account, the commissioner may direct that the account be referred to an arbitrator nominated by the parties, or in default of such nomination, to an officer of the court; and such arbitrator or officer will report the amount due on either side, subject to any exceptions, which the commissioner will hear and decide.

XV. And it is hereby enacted, that in all suits for the breach of a contract, if it shall be made to appear to the commissioner that the contract may be performed without prejudice to the plaintiff, and that the defendant is able to perform it, the commissioner may direct a specific performance of the contract, and enforce it by attachment.

XVI. And it is hereby enacted, that the commissioner in his decree shall order how much of the amount of any fees which may have been paid or be payable to any attorney or barrister, shall be reckoned as costs between party and party; and what other expenses incurred by the parties in prosecuting or defending the suit shall be reckoned as costs between party and party, and shall order in his decree which party shall pay costs to the other, and to what amount.

XVII. Provided that no fees which may have been paid or be payable to any attorney or barrister shall be reckoned as costs between party and party, unless the commissioner shall be satisfied that the assistance of such attorney or barrister was reasonably required.

XVIII. And whereas it is expedient that inconsiderate litigation should be discouraged, and that those who sue or defend inconsiderately should contribute towards the expenses of the judicial establishment; It is hereby enacted, that in every suit in the said subordinate civil court the party or parties against whom the decree is made shall, if plaintiff or plaintiffs, pay a fee equal to
of the value claimed in the plaint; and if defendant or defendants, a fee equal to
of the value decreed.

XIX. Provided, that the commissioner may remit such fee, if he shall be satisfied that the party or parties against whom the decree is made had reasonable ground for suing or defending.

XX. And whereas it is expedient that parties to suits, who prevaricate or wilfully make false statements, should be punished; It is hereby enacted, that whenever the commissioner is satisfied that any party to a suit in the said subordinate civil

civil court has, by himself or his agent, prevaricated or wilfully made a false statement, he may in his decree impose upon such party a fine not exceeding and in default of payment may order such party to be imprisoned for a period not exceeding

XXI. And it is hereby enacted, that the amount of the fees and fines aforesaid shall be paid monthly into the treasury.

XXII. And it is hereby enacted, that the members of the said College of Justice, or the majority of them, may from time to time make such rules for the regulation of the proceedings of the said subordinate civil court as to them may seem meet, and as are not inconsistent with anything in this Act contained, which rules shall be in force from their date, and shall continue in force unless they shall be disallowed by the Governor-general in Council within the space of from their date; provided, that such rules shall be laid before the Governor-general in Council within the space of from their date.

XXIII. And it is enacted, that the sheriff of Calcutta shall execute the process of the said subordinate civil court, and shall, in respect to the execution of such process, be subject to the authority of the said subordinate civil court, and shall for his trouble in executing such process receive from the public treasury such remuneration as to the Governor-general in Council shall seem meet.

XXIV. Provided, that such remuneration shall be proportioned to the quantity of labour imposed upon the said sheriff in each month in the execution of the said process.

XXV. And it is enacted, that any suitor in the said subordinate civil court who shall feel himself aggrieved by any decree thereof, except decrees in such suits as are otherwise provided for in section XXVII. of this Act, may appeal from such decree to the College of Justice for the presidency of Bengal and Agra established by the Act of the Council of India, No. of subject to such rules as are contained in that Act, or, subject to such rules, may move the said College of Justice for an order to the subordinate civil court to reconsider its decree, or for any order to the said subordinate civil court for a new trial of the facts on which its decree is founded.

XXVI. And it is hereby enacted, that the said College of Justice shall not alter or reverse any decree of the said subordinate civil court, nor grant an order to reconsider any decree of the said subordinate civil court, nor grant an order for a new trial of the facts on which any decree of the said subordinate civil court is founded, if the decree be consistent with the justice, conscience, and equity of the case.

XXVII. And it is hereby enacted, that any suitor in the said subordinate civil court who shall feel himself aggrieved by any decree thereof which has been made by a commissioner who is not a barrister, in a suit for wages, for goods sold and delivered, for money lent, for money due for the lien of any personal property, or for wages, in which the value in dispute shall not exceed the sum of rupees 400, may appeal from such decree to the chief commissioner of the said subordinate civil court, subject to the same rules, as nearly as may be, as the parties appealing to the College of Justice, under section XXV.; and that the said chief commissioner shall in such cases deal with the decree as the said college is directed to deal with decrees by section XXVI. of this Act.

XXVIII. And whereas, although the several provisions hereinbefore contained for the constitution of the subordinate civil court are all copied, more or less, exactly from the provisions for the constitution of the several sorts of courts used in the administration of English law and equity, yet the combination of the said several provisions in one court is new and experimental; and it may happen that a people accustomed to the administration of justice by civil action at law in Her Majesty's Supreme Court, may feel aggrieved if they are deprived thereof: It is hereby declared and enacted, that nothing in this Act contained shall be construed to affect the jurisdiction now exercised by the said Supreme Court in civil actions at law.

Indian Law Commission, (signed) *J. C. C. Sutherland*,
31 July 1841. Secretary.

Legis. Cons.
10 June 1842.
No. 11.
Court of Requests.

MINUTE by the Honourable *A. Amos*.

THE first subject which it occurs to me to consider is, whether the draft of the Commissioners could be adopted without sending it home? I think such a reference will be necessary; but the reasons, if they are entitled to any weight, are too obvious to require discussion in a written minute.

1. On the subject of expense.

I have recommended the Commission to furnish an estimate of the "fees of court" which may be payable on each step in a suit, including the fees on an appeal. This, however, cannot be satisfactorily accomplished until Government lays down the principle whether the court must pay itself, or whether Government will pay the judges, or, as recommended, the expense of executions. As the question must greatly depend on the average number of suits, and the stages to which they ordinarily proceed, any estimate which can be at present furnished can only be a loose approximation. I think, however, that notwithstanding the appeal, the "fees of court," in regard to quantity and amount jointly, will be less than those of the Supreme Court, even in the class of actions now ordinarily brought in the Supreme Court; but in actions of that description, the saving will not be great, and it must be considered that "the fees of court" constitute but a small part of the expenses of a suit.

A more important question as regards expense is, that of the fees of counsel and attornies. These are the main sources of expense, and here I must say that the Supreme Court has been sometimes misrepresented. The costs paid by the unsuccessful party are those which have been more commonly brought under the attention of Government, and they are, no doubt, of a frightful character. But in those cases the successful party, who it has been determined had right on his side, has got justice very cheaply. In England the courts do not compel the unsuccessful party to reimburse the successful party to the same extent, and consequently, in England it often happens that the successful party gains a loss; pays more to his legal advisers than he recovers from his adversary. The Mofussil practice is further removed from that of the Supreme Court than that of England. The successful party only recovers costs in a certain proportion to the sum disputed. There can be little doubt that the practice of the Supreme Court is the most just, provided the costs are necessary; it may, however, lead to an unnecessary accumulation of costs. If the practice of the Supreme Court be inexpedient, the alteration may be made in the court itself, without creating a new court for that purpose. But I do not collect that the Commissioners propose any change in the principles with regard to costs adopted by the Supreme Court.

But a very important question remains with regard to costs. It is to be inquired whether, adhering to the principles of the Supreme Court, fewer costs will be necessarily incurred by the successful party. The absence of written pleadings, it may be said, will cut off one great head of costs; and it may be thought that bringing the parties together will often curtail, or, perhaps, dispense with subsequent chargeable proceedings. Weight is due to both these considerations. But on the other hand, it must be borne in mind that instead of one, as at present in the Supreme Court, there may be four important proceedings in open court, the plaint, the issue, the trial, the appeal. Professional assistance in open court is much more expensive than what is conducted in the closet, both as to quality and time. When the issue is to be made up conversationally, when parties are to be personally cross-examined, and their appearance under examination, and answers commented on; when even in the plaint a person may prejudice his cause from want of presence of mind, or ignorance of law, and when, moreover, the appeal is taken into account, I think the successful party in all complicated cases, or where the matter is not one of mere pecuniary calculation, will necessarily incur more costs than in causes in the Supreme Court. If a different opinion is entertained upon this point, it will be important further to consider, that before a weak tribunal, especially in cases assigned to the native commissioners, if one party brings counsel it makes counsel on the other side virtually necessary. And unless a case be very simple, and free from inflammatory topics, such as occur in libels, crim. cons. and the like, professional assistance will generally be necessary on both sides; added to which, trials and examinations of parties, and conversational settlements of issues before

before judges of inferior authority, especially unprofessional judges, will, in all but simple cases, be almost interminable; indeed, if the rules of evidence are to be relaxed to a great extent, I do not see my way to the end of trials. All this prolixity of practice involves the successful party in necessary expenses.

2. On the principles of jurisprudence involved in the scheme of the Commissioners.

I think that the oral settlement of the plaint and issue, though well calculated for simple cases, will be found to fail where cases are numerous and important. Besides the expense, the consumption of time in verbal discussions, and the excitement, it will be constantly happening that what has been settled in the hurry of business and heat of argument, or under agitation in persons not used to public appearance, will have to be done over again, or will operate unjustly. The settlement of issues, in important cases often requires much reflection, not only on the facts, but on their various legal bearings. The new practice would expose the discretion and temper of the judge to a much stronger trial than might be deemed safe and expedient. I fear the proceedings on these occasions would often be derogatory to the dignity of public justice, and would be generally dissatisfactory to suitors. The experiment, except as to petty suits, has not been countenanced in England, though the procedure of the courts has there undergone a very searching reform.

With respect to the examination of parties, there can be no doubt that in small cases it is most desirable. In the cases at present cognizable by the court of requests, I am persuaded that it tends very much to curtail inquiries, and to discover truth. It may be thought that the principle is equally applicable to large cases, and that the procedure of English courts is in this respect subject to an obvious defect. I have, however, doubts as to the practical benefit of a change of system, at least in the more important or complicated cases. I have, perhaps, seen more of the examination of parties, which is part of the ordinary rule of courts or arbitrations, than any member of the English bar. I have conversed with Mr. Bell, who, in his day, had, perhaps, the largest experience of any individual in bills of discovery, and the conclusion I should draw would be, that in a very few instances out of a great many, truth would be developed which would otherwise be concealed; yet, that in most cases there would be danger of a person not gifted with nice discrimination being misled by perjuries and false colourings; that time consumed in the cross-examinations and re-examinations of parties, and the personal abuse and defence of them would be incalculable, and the excitement, extending to the professional persons concerned, extreme. The Commissioners do not visit the parties for false testimony with the punishment of perjury; on the other hand, they may be stigmatized and fined by a judge without a jury. Perhaps this is the best choice of alternatives, but it is far from being unobjectionable.

3. Conclusion as to the scheme proposed by the Commissioners.

The court proposed by the Commissioners, besides disposing in the most eligible way, as I think it will, of the cases now subject to the jurisdiction of the court of requests, would, I have little doubt, succeed extremely well in cases somewhat higher; and if, as I incline to think, notwithstanding exaggerations, owing to the cause I have before indicated, there be a considerable class of cases in which there is a failure of justice, owing to the expenses of the Supreme Court, they will be just that class in which the proposed scheme would work most favourably. I am inclined to think that the scheme of the Commissioners is a very fair experiment for deciding cases generally under 5,000 rupees, with the exception of suits for land, and perhaps some other species of suits.

It is to be observed that the scheme of the Commissioners is experimental, and that great inconvenience will arise from having two original courts in Calcutta with concurrent jurisdiction, an inconvenience not hitherto felt, because suits tried by the court of requests have not been of a nature to be brought before the Supreme Court. The average number of suits before the court of requests has been between 20,000 and 30,000 annually, of which about 13,000 have been under five rupees, and about 20,000 under 20 rupees; whereas half the judgments before the Supreme Court have exceeded 5,000 rupees, the number below that sum being from 200 to 300. Many of the judgments in the Supreme Court are, however, not upon contested suits, but securities for loans. The inconvenience from concurrent jurisdictions will be less if the subordinate court be of more

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limited jurisdiction than the Supreme Court; its chance of failure will also be less, and be attended with less prejudicial consequences, whilst with a limit of 5,000 rupees the experiment of oral pleading and examining parties will be fully and favourably tried.

I incline to think that it would be a very desirable modification if the judge of the subordinate court were a member of the College of Justice. If he were not a fixed judge, but presiding by rota or other arrangement among the English judges of the College of Justice, we should lessen the risk of the failure of the plan from the failure of the judge. We should add to the convenience of appeals, for it will be frequently necessary for the College of Justice to confer with the judge presiding at a trial; we shall remove grounds of jealousy, and if the Supreme Court is to retain the general equitable juridiction, and the subordinate court is to exercise a mixed jurisdiction of law and equity, it will be very desirable to provide against conflicting determinations. I may here observe that the power which the Commissioners would give of deciding "according to equity and good conscience," instead of the principles of English courts of equity, modified only by their adaptation to local circumstances, is subversive of all certainty in the administration of justice. A late opinion of the Sudder Court of Bengal, respecting payments to an unlawful representative of a deceased creditor, has made a strong impression upon myself, at least of the extravagance to which notions of "equity and good conscience" may be carried, if not restrained by fixed principles.

I do not mean to say that I am averse to alterations in the practice of the Supreme Court; I would have all examinations on the equity side to be made *vivâ voce*. A great part of the equity business might be more conveniently done on the law side of the court; and I am not averse to a reconsideration of the principles in awarding costs, or to an inquiry whether any advantage would arise from taxing professional assistance at a lower rate; and if the subordinate court should succeed in the cases which now it is supposed cannot be tried at all, I should then feel much greater confidence than I can do at present in giving the subordinate court unlimited original jurisdiction; a very short trial might justify us in putting an end to all concurrency of original jurisdiction by taking the smaller class of cases entirely out of the jurisdiction of the Supreme Court, except by appeal.

If a College of Justice (or general appeal court) be constituted, then I would have civil causes, criminal trials, and equity suits, each decided originally by one judge; I would constitute the College of Justice, and direct that Her Majesty's judges sitting singly should try equity suits, criminal matters, actions for demands above 5,000 rupees, according to their present procedure; actions below that amount according to the new procedure, but in the latter case aided by two or three native commissioners, receiving not 1,500 and 1,200 rupees as at present, but a much less sum. To attain these objects, I would, if absolutely necessary (which may be inquired into), recommend an additional Queen's judge. It may be taken for granted that the business under the new form of procedure will require more ability, discretion, and knowledge than is at present required for judges of the Supreme Court, and the want of these qualifications will be more quickly and palpably perceived.

4. Considerations, if the matter cannot wait a reference home or be disapproved of generally.

I have requested that a comparison be made between the number of cases determined by the court of requests since the recent decision of the Supreme Court, and the number determined previously; I think that possibly as suits under five rupees averaged in number 13,500, and chiefly consisted of demands for goods sold, hirings, and wages, that it may be found that the complaints we have heard in a great measure arise merely from the soreness and groundless fears of the commissioners.

The last views of the Council were favourable to restoring the commissioners to the jurisdiction they actually exercised before the late decision. I apprehend, however, that by far the great number of cases they decided were strictly within their jurisdiction; and there would be a wide difference between their taking cases out of their jurisdiction where the parties consented or knew no better, as was frequently,

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quently, no doubt, the case, or for other reasons did not resist, and giving them jurisdiction expressly by a legislative Act over classes of cases for the decision of which they are unfit. To this it may be replied, that the commissioners are as fit as the functionaries who administer justice in the Mofussil; that the proceedings may be removed by *certiorari* into the Supreme Court; and that before the recent decisions the commissioners exercised the jurisdiction now proposed to be expressly given them without creating apparent dissatisfaction. It would swell this minute to too great a length if I were to canvass these reasons with particularity, but I can say that they are not satisfactory to my mind. I think we should be going as far as was proper with the present constitution of the court, if we expressly authorised the commissioners to sit singly, and give them jurisdiction to their present extent of 400 rupees in suits for goods sold and delivered, wages, hirings of horses, or conveyances of any description, work and labour performed, money lent and not secured by bond or mortgage. These classes of cases may be subject to modification on reference to the Commissioners and inspection of the returns which will appear in the report to the draft Act.

If it is essential to go beyond this, or something like this, then I think it will be necessary to add an appeal to a single judge. Even then many may think an assessor would be desirable; but with the machinery of an assessor and an appeal, the jurisdiction might be very much enlarged. I have before presented two drafts, one for restoring the assumed jurisdiction of the court of requests, another introducing the assessor and appeal. The latter might be, perhaps, advantageously modified, by leaving out the assessor, who might be added if afterwards found requisite. The amount (1,000 rupees) should, if there be no assessor, be reduced to 400; the jurisdiction to extend to all cases except real property. The fees of an appeal must be settled, and a deposit required sufficient to prevent vexatious appeals. I have only to add that I have fully discussed all the above matters at the meetings of the Commission.

(signed) *A. Amos.*

2 August 1841.

(No. 50.)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 10 June 1842. No. 12.

Sir,

I AM directed by the Honourable the President in Council to request that you will remind the Law Commissioners that the report of the "reasons" on which the provisions of the Act for establishing a court of subordinate civil jurisdiction in Calcutta, promised in your letter, dated the 31st July 1841, has not yet been submitted, and that with reference to practical objects of immediate urgency, the same is much required by government.

Legislative Dep.

I have, &c.

(signed) *F. J. Halliday,*
Officiating Secy to the Govt of India.

Council Chamber,
10 June 1842.

— No. 5. —

No. 5.
Draft Act relating to Court of Requests.

DRAFT ACT

For temporarily remedying Inconvenience in the Proceedings of the Court of Requests.

Legis. Cons. 10 June 1842. No. 13.

From the Indian Law Commission to the Right honourable the Earl of *Auckland*, G. C. B., Governor-General of India in Council.

As our Report, explaining and justifying the plan of judicature proposed in the Draft Act sent up to government by us on the 31st July last is, though far advanced, still unfinished; and as it is probable that the plan, involving as it does changes of great importance, and technical questions of considerable nicety, will be referred to the home authorities, we have thought that it may be expedient to adopt a temporary measure for the special purpose of remedying the inconvenience complained of as the result of the decision to which the Supreme Court came in the case of *Anderson* v. *Russomoy Dutt*.* We accordingly now submit for the consideration of your Lordship, a plan for this object, based upon the evidence of Sir E. H. East, before the Select Committee of the House of Lords, 1830†, and upon the practice of the judges of the Supreme Court at Bombay sitting in their small cause court‡. It is our opinion that a plan of this kind is very much to be preferred to any extension of the jurisdiction of the court of requests beyond the limits assigned to it by the decision to which we have alluded.

Vide letter from the Commissioners dated 3 Aug. 1840, enclosed in letter from Jun. Sec. to Government, Leg. Dept. 12 Oct. 1840.

We have thought it advisable that the practice of the commissioners of the court of requests, in hearing and deciding causes, and doing other acts singly, should be sanctioned by a legislative enactment, and in the draft of an Act herewith submitted, containing the provisions we propose as a temporary arrangement for the adjudication of matters excluded from their jurisdiction by the decision of the Supreme Court, we have introduced a section to that effect.

We submit this our Report for the consideration of your Lordship in Council.

We have, &c.
(signed) *Andrew Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
26 Feb. 1842.

Draft of Act.

Legis. Cons. 10 June 1842. No. 14. Enclosure.

Whereas the jurisdiction of the court of requests for the recovery of small debts in and for the settlement of Fort William, is limited to suits brought for the recovery of debts not exceeding 400 sicca rupees, or Company's rupees : and whereas it is not expedient that the jurisdiction of the said court of requests should be extended : and whereas, until a general scheme of judicature, adapted to the circumstances of British India, or such parts of such general scheme as may provide for judicature within the presidency towns, can be prepared, it is expedient that temporary provision should be made for the decision of matters which are not within the jurisdiction of the said court of requests, but which are of so little value that it is inconvenient to the parties to sue for them in Her Majesty's Supreme Court of Judicature :

It

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* Enclosures in letter from Junior Secretary to Government, Legislative Department, dated 12th October 1840.

† Minutes of Evidence taken by Select Committee, House of Lords, 1830, pp. 138 to 140.

‡ Enclosures in letter from Junior Secretary to Government, Judicial Department, 22d June 1840.

No. 5.
Draft Act relating to Court of Requests.

It is hereby enacted, that from and after it shall be lawful for any of the judges of Her Majesty's Supreme Court to hold a court for the hearing and decision of all matters for which a civil action at law will lie in the said Supreme Court, provided that the amount claimed by the plaintiff do not exceed 400 sicca rupees, or Company's rupees , and provided that the matter be not such as could form the subject of a suit in the said court of requests.

And it is enacted, that every judge of the Supreme Court, holding such court as is described in section I., shall proceed in a summary manner, by examination upon oath, or affirmation of parties and witnesses, subject to such rules as are hereinafter mentioned.

And it is enacted, that every judge of the Supreme Court, holding such court as is described in section I., shall in every case make such a decree as may be agreeable to equity and good conscience, following such law as the said Supreme Court would have administered if the matter had been brought before it in an action at law.

And it is enacted, that in every decree made as aforesaid, the judge shall order how much of the amount of any fees which may have been paid or be payable to any attorney or barrister, shall be reckoned as costs between party and party, and what other expenses incurred by the parties in prosecuting or defending the suit, shall be reckoned as costs between party and party, and shall order in his decree which party shall pay costs to the other, and to what amount.

Provided, that no fees which may have been paid or be payable to any attorney or barrister shall be reckoned as costs between party and party, unless such judge shall be satisfied that the assistance of such attorney or barrister was reasonably required.

And it is enacted, that the said Supreme Court may make such rules for regulating the proceedings before a judge, holding such court as is described in section I. as shall appear to them most conducive to the discovery of truth, and the speedy and economical attainment of justice.

Provided always, that such rules shall not be inconsistent with anything contained in this Act.

And it is enacted, that all the power and authority vested in the said Supreme Court, in the trial of civil actions for the punishment and examination of witnesses, and the administering of oaths and affirmations, shall be vested in every judge holding such court as is described in section I.

And it is enacted, that the said Supreme Court shall from time to time appoint such of their officers, or if the officers of such Supreme Court shall be found insufficient, such additional persons as may be necessary to transact the business of, and generally to act as ministerial officers of such court, as is described in section I.

And it is enacted, that all powers vested by law in the commissioners of the court of requests aforesaid, shall be vested henceforth in every such commissioner sitting singly.

Indian Law Commission, (signed) *J. C. C. Sutherland.*
26 February 1842.

(No. 21.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *L. Peel*, Esq. Advocate-General.

Legis. Cons. 10 June 1842. No. 15.

Sir,

I AM directed by the Right honourable the Governor-general in Council to transmit the accompanying despatch, dated the 26th ultimo, from the Law Commissioners, and to request that you will favour his Lordship in Council with your opinion on the provisions of the draft Act prepared by the Commissioners to remedy the inconvenience complained of in the proceedings of the court of requests.

Legislative Dept.

2. The papers referred to in the Report of the Law Commissioners are also forwarded, and you are requested to return all original papers when no longer required by you.

Judicial Cons. 22 June 1840, No. 11 to 13.
Ditto - 7 Sept. 1840, No. 4 to 6.
Ditto - 12 Oct. 1840, No. 3 & 4.
Letter from Secretary Indian Law Commission, dated 31 July 1841, with one Enclosure.
Minute by the Hon. A. Amos, esq., dated 2 Aug. 1841.

I have, &c.

Council Chamber, (signed) *T. H. Maddock*,
21 March 1842. Secretary to the Government of India.

No. 5.
Draft Act relating to Court of Requests.

Legis. Cons. 10 June 1842. No. 16.

From *Lawrence Peel*, Esq. Advocate-General, to *T. H. Maddock*, Esq. Secretary to the Government of India.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st March, requesting my opinion upon the provisions of a draft Act for the formation of a court of a limited jurisdiction, to supply the deficiencies arising from the restriction of the powers of the present court of requests. From the terms of the reference to me, I consider that the necessity of the formation of some such tribunal is felt and acknowledged. I have not the means of forming an opinion upon this point, nor can I tell the probable amount of business which such a court will have to transact. Assuming, as I think it would be found to be, that the business to be despatched by the court would not be too onerous for the unemployed time of the judges of the Supreme Court, I think that the appointment of one of the judges of that court to hear the cases under the Act is the best arrangement that can be made; and I am of opinion that by a proper arrangement amongst the judges of the Supreme Court of the general business of the court, the additional business to devolve upon them might be disposed of without difficulty or delay. Although I think the benefits of an examination of the parties to the suit to be in general greatly overestimated, yet I entertain no objection to the provision. The more competent the judge who presides in such a tribunal, the less is the danger of introducing this species of evidence. It should also be coupled with a provision that no witness should be deemed incompetent by reason of interest or otherwise. The efficiency of this court, as it appears to me, will depend in a great measure upon the rules which the judges are empowered to make. These are not made subject to any revision; I think the Governor-general in Council should have the power of annulling such as appear objectionable. The provision constituting such a court a court of conscience, to proceed and to give such a decree as may be agreeable to equity and good conscience, I do not approve of. My objection to it is this, the court has almost a general jurisdiction; that is, over all subjects of complaint, except simple debts, to the extent of the jurisdiction of the court of requests. I think the consequence of such a provision, if acted on, would be to introduce a very general uncertainty concerning the law amongst the classes who would most frequently resort to the tribunal, and a very great increase of litigation; and I should much prefer a tribunal which had to decide according to the injunctions of some given law, applying the law of the Hindoos, of the Mahomedans, or the English law, according to the nature of the case, in a mode which may govern like cases for the future. The public would not know what special causes induced a departure, in particular instances, from the general law, and the decisions of the court would be considered capricious, and so far would inspire little confidence or respect. This objection, if valid, applies undoubtedly, to a certain extent, to all courts of conscience; it is, perhaps, one reason why, notwithstanding their cheapness and despatch, they are so little respected. No provision is made in this Act for defraying the expense of the court. The judges could not impose any fees, nor could they require of the officers of the Supreme Court to undertake duties in a newly-constituted court without emolument: some provision should be made for this. I have no other objections to urge to the Act, which, if it be necessary to pass a provisional and temporary Act of the kind, may be productive of benefit, if the judges of the Supreme Court frame their rules in a wise and liberal spirit, adapting them to the necessities of the case, getting rid of all mere formalities and technicalities of proceeding, evolving in the shortest and most simple form the cause of complaint and the answer to it, facilitating the admission of all evidence pertinent to the matter of inquiry, and making the fruits of a judgment to follow at once upon its award, with a power to mitigate, in proper cases, the rigor of an instant execution.

I have, &c.

30 March 1842. (signed) *L. Peel.*

No. 5.
Draft Act relating to Court of Requests.

(No. 639.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, Judicial Department.

Legis. Cons. 10 June 1842. No. 17.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying original letter from the commissioner of the court of requests, dated the 10th instant, with its enclosure, bringing again to the notice of Government the anomalous position of that court, and reporting the particulars of a case recently instituted, out of which has arisen questions of some importance. Judicial Dept.

2. The return of the original documents is requested with your reply.

I have, &c.
(signed) *F. J. Halliday*,
Fort William, 23 May 1842. Secretary to the Government of Bengal.

From the Commissioners of the Court of Requests, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Legis. Cons. 10 June 1842. No. 18. Enclosure.

Sir,

IN our letters dated the 3d August 1840, and the 23d February 1841, we endeavoured to set forth in detail the peculiarly anomalous condition of this court, and how inefficient it would become unless the government interposed by a legislative enactment to render its jurisdiction clear and defined. We propose now to report, as succinctly as we can, the particulars of a case out of which has arisen questions of the deepest importance, and which, if not speedily settled, we venture to predict that this court will be treated with the greatest contempt, and its authority utterly derided.

2. In order to observe perspicuity, we shall, 1st, give the facts of the suit alluded to as they came out on each day of trial; and, 2dly, we shall then make such comments as the nature of the subject appears to call for.

1st. This case was instituted to recover 387 rupees, 13 annas, for balance of accounts. After hearing the statement of both parties it was postponed till Monday following, and fixed for 12 o'clock, attachments having been ordered against several witnesses on behalf of the plaintiff, who had been duly subpœnaed, and did not attend. F. Pueba *v.* Tourneur. 23 April 1842.

The case by consent of plaintiff was postponed to Wednesday next. 25 April.

And on this day, at the request, and with the full concurrence of the plaintiff and defendant, the whole of the matters in dispute were referred to the arbitration of Captain G. Vint, for four weeks. Several witnesses were sworn by the sitting commissioner to give evidence before the arbitrator. 27 April.

A material witness, J. W. Agar, was called, and refused to swear until his expense for conveyance and remuneration for loss of time in attending the court were paid to him by plaintiff. The court informed the witness that he could not demand remuneration for loss of time, but that it would take time to consider regarding his claim for conveyance charges, and postponed the further hearing of the case till next day.

On this day the plaintiff and the recusant witness appeared, but defendant was absent. The court observed that, after maturely considering the subject, it was of opinion that the witness could neither claim payments of remuneration nor conveyance charges; and that by his refusal to take the prescribed oath to give evidence, he commits a contempt of court, and incurs the consequent penalty of law. Some observations being made as to the mode of swearing, the court intimated its willingness to take any form of oath which the witness might consider most binding on his conscience; but he still persisted in his refusal, and declined to swear until his expenses were paid; accordingly the case was postponed. It was intimated to the witness that the court would adopt such measures in this business as may appear advisable, and that he was at perfect liberty to depart. 28 April.

No. 5.
5 May.

The arbitrator having prepared and sent in his award earlier than was expected, the case was appointed to be heard at 12 o'clock this day, by consent of parties. At the hour fixed the plaintiff and defendant appeared with their legal advisers.

The court published the award by reading it audibly in their presence. Some objections were taken by the defendant, through his attorney, W. D. Shaw, as to the jurisdiction of the court; but these were all overruled, and the award of the arbitrator was confirmed, and decree recorded by the court accordingly; the usual registration of the court having been made in the commissioner's book at the time, and intimation given to the plaintiff that he would be at liberty to take out execution against the defendant if the amount decreed against him was not paid in due course.

6 May.

On this day the accompanying original letter was received from the defendant's attorney, W. D. Shaw, which appears to contain strong legal objections to the competency of this court to adjudicate a suit which has been once referred to arbitration, as well as to confirm the arbitrator's award, and pass any decree grounded thereon, and to issue execution.

We consider the subject of such deep importance that we respectfully suggest an immediate reference should be made to the advocate-general, in order that we may be certified how to shape our future proceedings in such cases.

From the period of this court's institution in 1802, European and native suitors have desired, and cheerfully submitted their disputed claims to arbitration, when they considered it necessary; and, on confirmation of the award, have consented thereto, just as if the court had adjusted their cases. At present there are pending both on the English and native files several suits, all of which we propose to adjudicate in court by cancelling the order of reference, and discontinue sending any more cases to arbitration till this question shall have been officially determined.

2dly. It were almost needless, we think, to offer any elaborate comments on the foregoing statement of facts; for it must be evident that the court is so shackled as to be positively unable to act with freedom. Here a witness subpœnaed refuses to take the prescribed oath to give evidence until compensation be tendered to him; the court pronounces it a contempt, but has not the power to punish him, according to the opinion of the advocate-general, dated February last, which was recently furnished to us through the Judicial Department: "The court of requests is established under the charter of Geo. 2; it is not a court of record, and no power is given to the commissioners to fine or imprison for contempts, at least I can find no legislative provision to that effect, and I think that contempts of that court can only be punished by indictments to be preferred before the judges of the Supreme Court."

What an indictment is we all know; the trouble, litigation, and expense which it involves are sufficient to deter any public office from seeking redress in this way; yet, if government will authorise it, we shall be prepared to submit, through the Honourable Company's solicitor, all contempts of this court for trial before the Supreme Court.

3. We shall conclude this report with only a few remarks. Here is a court holding its sittings daily in this vast city, administering justice to an immense population, without having its jurisdiction clearly defined, subject to all manner of contempts, and compelled to look on with indifference. Whilst its presiding officers are known to possess no penal authority whatever, it is no wonder that they are considered as so many nonentities, and their ministerial servants maltreated and scouted at, when in the discharge of their duties, publicly in the streets. On the present occasion we apprehend that the very essence of a court of justice has been invaded; namely, its inherent right to call witnesses before it, and compel them to give testimony on oath. But supposing the objections of the witness, Agar, to be valid, then must immediate provision be made by law for the court to award compensation to all who may claim it before giving their evidence, for assuredly all will demand it; some with an honest intention to save themselves and families from loss of time, others in league with designing, crafty suitors, in order that they may defeat, if possible, the ends of justice, and deprive creditors of their just dues.

The opinion expressed by the judges of the Supreme Court in the year 1840, regarding the jurisdiction of this court being limited only to "simple debts," has completely thrown out an immense body of suitors, who used to resort to it for the

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the adjustment of their claims, and who are now utterly deprived of any remedy whatever. On this subject we would state a very remarkable fact, which was brought to our notice officially by the pauper attorney, a few months ago. A petition was presented to the late chief justice, Sir Edward Ryan, in chambers, which his Lordship referred to that officer. The petitioner complained that he had instituted a case in the court of requests, to recover a comparatively trifling sum, the value of a shawl detained by another party, and that this court had declined to interfere, and nonsuited him, on the ground of jurisdiction. The chief justice, in handing this petition over to the pauper's attorney for his report, observed, that such a state of things ought not to exist, "for here is an evil without a remedy." If there is any truth in this remarkable observation, as applied to the past situation of this court, it is tenfold more appropriate to its present position; and we earnestly hope and trust that the momentous questions which we have now endeavoured to exhibit will meet with ready interference on the part of government. It cannot be possible that this court should be allowed to remain any longer in its present crippled state. If it be not protected, if it be not established on a legal foundation, if its powers are not clearly defined, we shall daily hear of and see a fearful tyranny wielded by the dishonest over the upright, and an obvious anomaly generated in the very heart of the metropolis of India.

We have, &c.
(signed) *C. Brietzeke,*
Russomoy Dutt, } Commissioners.
Court of Requests, 10 May 1842. *David Hare,*

From *W. D. Shaw*, Esq. Attorney at Law, to *Charles Ware Brietzeke*, Esq. and *Baboo Russomoy Dutt*, Commissioners of the Court of Requests.

Gentlemen,

On behalf of C. Tourneur, esq., I hereby give you notice, that if any warrant or process is issued by you, or either of you, or any commissioner of the said court, against the said C. Tourneur, or against his goods or chattels, in respect of a claim preferred against him by one F. Pueba, and if the said C. Tourneur, or his goods or chattels, is or are seized thereunder (as you, the said Charles Ware Brietzeke, esq., stated you would do), the said C. Tourneur will hold the party or parties issuing such writ and executing the same, liable to him for any such proceedings, the said C. Tourneur being advised that any such proceeding will be illegal. Mr. Tourneur has been advised, that by the reference of this case by the parties to Mr. Vint, the jurisdiction of the court of requests over him ceased.

Mr. Tourneur having received notice that you required his attendance, he, out of courtesy, waited upon you; but he in no manner admitted your right to act in the case referred to Mr. Vint. He, in truth, submitted to you, through me, that you had no authority in the case.

I believe that it is not for the commissioners of the court of requests to determine whether an award is good or bad. If no other ground existed, the insufficiency of Mr. Vint's award, as admitted by you, is a good ground for my client refusing to perform it, and the question of its sufficiency or insufficiency cannot be decided by you.

I have, &c.
(signed) *W. D. Shaw,*
Esplanade Row, 6 May 1842. Attorney at Law.

Minute by the Honourable *A. Amos*, dated the 6th June 1842.

Legis. Cons. 10 June 1842. No. 19. Court of Requests.

In addition to the papers sent by the commissioners of the court of requests, I send Mr. Peel's Report on the draft Act, for transferring part of the business of the court of requests to a single judge of the Supreme Court; also a short note from Mr. Elliott.

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The particular cause for the commissioners coming before us on the present occasion, is one for which they have no just ground of complaint. They know very well that their jurisdiction is confined to simple debts; and yet they allow or get the parties beforet hem to agree upon an arbitration, and then seek to enforce the awards. Having had very large experience on the subject of awards, I know that it requires often considerable legal knowledge and great judicial discretion to determine whether an award be good or bad in point of law. It is a very unfit question for the commissioners; but fit or unfit, it is plainly out of their jurisdiction. Their jurisdiction is plainly defined; but if they have any doubts as to its extent, they will be at liberty to apply to the Company's law officers. But, on the present occasion, they come to government merely because they have undertaken to decide upon awards, and have found, though apparently without having any action brought against them, what they ought to have known, or at least ought to have inquired about, that they have been exceeding their jurisdiction.

Whether, in consequence of the commissioners being confined more strictly than formerly to the undoubted limits of their jurisdiction, there be a failure of justice in regard to various small demands, is a question the affirmation of which I believe to be true; but it is a question which does not concern the commissioners. If they had not gone on illegally decreeing upon demands of this nature, the grievance would most probably have been remedied long ago, in a legal way.

It may be observed, that a real grievance is indirectly indicated, viz. that the commissioners have not sufficient power for compelling the attendance of witnesses before them. I should conceive, however, that no great practical inconvenience was experienced on this ground, as the only case the commissioners bring forward is one in which the witness was to be sworn, in order to go before an arbitrator. The doubt as to the legality of the commissioners deciding cases when sitting singly, is of still greater importance; and were objections to be taken, we should, I think, have to legalize their proceedings, in this respect, retrospectively.

It is important that all these matters should be considered with reference to the actual vacancy in the court of requests.

(signed) *A. Amos.*

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10 June 1842.
No. 20.
Enclosure.
Court of Requests.

NOTE by *D. Elliott*, Esq.

MR. PEEL is of opinion that the appointment of one of the judges of the Supreme Court to hear cases within 400 rupees, not cognizable by the commissioners, is the best arrangement that can be made. He does not object to examination of parties. The provision for this, he thinks, should be coupled with one admitting the evidence of interested persons. He thinks the rules to be framed by the judges should be subject to the approval of the Governor-general in Council. Objects to decrees according to equity and good conscience; does not notice, however, the qualifying words, " following such law as the Supreme Court would have administered;" and I understand from Mr. Cameron that he has had a conversation with Mr. Peel on this point, and that upon his explanation Mr. Peel is not inclined to insist upon his objection. He has no other objections to the Act; and he might be expected, as chief justice, to frame the rules in a wise and liberal spirit, with attention to the points which he notices as of most importance.

The draft Act submitted by the commissioners, besides providing for the hearing of the cases in question by a judge of the Supreme Court, also went to legalize the practice of the commissioners in separately exercising the power of the court. A further provision might be introduced to remedy the inconvenience pointed out in the letter from them now before government, from their having no power to punish contempts; the power might be given to them, or if there is any objection to the judge of the Supreme Court acting under the new law, upon their representation, after making any inquiry he may think proper.

I think that the operation of the proposed Act would tend to effect what is so urgently

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urgently represented by the commissioners to be necessary, viz. to define their jurisdiction; cases they doubted their power to try, they would direct to be carried before the judge, who would send back all which he thought within their cognizance; or a clause might be introduced authorising them to consult him directly on this point.

I think the present vacancy a good opportunity for introducing the plan which has been talked of, viz. the appointment of one or more native judges, of the class of moonsiffs or sudder ameens, for the hearing of petty causes between natives. If two were appointed, they could take off the great mass of business, and leave the superior judges leisure to proceed more deliberately in hearing and disposing of the cases reserved to them, on which there would be much advantage. But the vacant salary would provide for at the highest rate allowed to sudder ameens. Perhaps it would be best at first to have two principal sudder ameens on 500 rupees each; the salary of principal sudder ameens varies from 400 rupees to 600 rupees.

The jurisdiction of a principal sudder ameen in the mofussil is unlimited in respect of amount or value.

The jurisdiction of a sudder ameen extends to 1,000 rupees.

Of a moonsiff, to 300 rupees.

(No. 47.)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government in India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Legis. Cons. 10 June 1842. No. 21.

Sir,

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 639, dated the 23d ultimo, with its enclosures, relating to the anomalous position of the court of requests.

Legislative Dept.

2. The Supreme Government has under consideration a draft Act, submitted by the Law Commissioners for the formation of a court of limited jurisdiction, to supply the deficiencies arising from the restricted powers of the present court of requests. Of this draft I am directed to enclose a copy for his Honour's information. His Honour is requested to point out to the commissioners that they have brought themselves into embarrassment in this instance, entirely by permitting suitors coming before them to agree upon an arbitration, and then seeking to enforce the arbitrator's award. This is plainly out of the commissioners' jurisdiction, which is very clearly defined. If, however, they had any doubts as to its extent, they were at liberty to apply in the usual manner to the Company's law officers for information.

3. The commissioners should therefore be strongly recommended to adhere closely to their jurisdiction in future.

4. The original enclosures of your letter are returned herewith.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Council Chamber,
10 June 1842.

(No. 48.)

From the Supreme Government to the Honourable the Judges of the Supreme Court at Fort William.

Legis. Cons. 10 June 1842. No. 22.

Honourable Sirs,

WE have the honour to forward the accompanying copy of a draft of a proposed Act for the formation of a court of limited jurisdiction to supply the deficiencies arising from the restricted powers of the present court of requests, submitted for our consideration by the Law Commissioners, in a letter dated 23d February last, and to request your opinion as to the necessity for such a tribunal, and the expediency of creating it in the manner proposed by the draft.

Legislative Dept.

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Draft Act relating to Court of Requests.

2. We are disposed to agree in the propriety of a suggestion which has been made to us, that a provision should be added to the draft to the effect that no witness should be deemed incompetent by reason of interest or otherwise; and that the rules for the guidance of the court which the judges are empowered to make should be submitted for the approval of the Governor-general in Council.

3. It has also been intimated to us that doubts, to which we attach importance, may be entertained of the expediency of the provisions constituting the new court a court of conscience, the decrees of which are to be agreeable to "equity and good conscience;" and further, that a provision is required (of the necessity of which we have considerable doubts) for enabling the judges to impose fees, or otherwise to defray the expense of the court.

We have, &c.
(signed) *W. W. Bird.*
W. Casement.
H. T. Prinsep.
A. Amos.

Council Chamber,
10 June 1842.

Legis. Cons. 30 Sept. 1842. No. 9.

From the Honourable the Judges of the Supreme Court at Fort William, to the Honourable the President of the Council of India in Council.

Honourable Sirs,

We have the honour to reply to your letter of the 10th June 1842, requesting our opinion as to the necessity of the tribunal proposed to be formed to supply the deficiencies arising from the restricted powers of the present court of requests, and the expediency of creating it in the manner proposed by the draft Act prepared by the Law Commissioners.

We have not the means of forming a judgment concerning the amount of business which would come before the court in question, and are therefore unable to say with any degree of certainty whether a judge of the Supreme Court could, without neglecting more important duties, attend during term time and the sittings, that is, during one-half of the year, to the business of the court proposed to be established, for a sufficient period in each week to keep the business of it from falling into arrear. If this doubt be groundless, we have no other objection to the establishment of the court proposed to be created than this; viz. that if two distinct courts of summary jurisdiction existed, that is to say, the court proposed to be created by this Act, and the court of requests as now established, a class of cases would exist approaching nearest to the boundary line of division between the jurisdictions of the two courts, as to which there would frequently be in the minds of the suitors doubts concerning the proper tribunal for their adjudication. Questions of jurisdiction would arise sometimes from error and sometimes by design; the suit would be preferred before the wrong tribunal, and fruitless proceedings be had before it, which inconveniences would not exist if the extended jurisdiction were made a branch of the court of requests. The court of requests might, in our opinion, be rendered a very efficient tribunal for the decision of the cases proposed to be referred to the summary decision of a judge of the Supreme Court, if the place of the third commissioner, now vacant, were filled up by the appointment of a gentleman of competent legal attainments, whose services we have no doubt might be secured at the salary paid to the late commissioner, Mr. Hare. This would not be more expensive, if so expensive, an arrangement as the institution of a new court. The officers of the Supreme Court would not be able to give due attention to the transaction of the business of the new court, and would frequently be engaged elsewhere officially during its sittings. The appointment of a clerk of court, whose services would be in constant requisition, of a few writers, and other minor officers, would be absolutely necessary, at a cost of not less, in our judgment, than 20,000 Company's rupees per annum, which might be raised by the imposition of a charge on the institution of a suit, or by fees, so as constitute but a slight burthen on the suitor. The court could not of its own authority impose such charges; and if the court be erected in the manner proposed, it appears to us to be essential that this power should be conferred on the Supreme Court, subject to the approval of the Governor-general in Council. We trust that we shall not be thought to be desirous of avoiding any new labour in stating it to be our opinion that the court would be

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be best constituted in the mode suggested by us; we think that an extension of summary jurisdiction is desirable, and if it be thought right to constitute the court in the mode proposed by the draft Act, the judges of the Supreme Court will give their zealous assistance to carry the views of the legislature into effect, being desirous that the court to be established should be rendered as beneficial as possible to the public. Whether that court be constituted in the one mode or the other, we think that it is desirable to exclude from its jurisdiction actions of assault, and for verbal or written defamation, otherwise many trifling and vexatious suits would be prosecuted, which would be instituted for purposes merely vindictive; and we also recommend that the rules of court relating to its practice, process, and the reception of evidence, should be framed or revised by the judges of the Supreme Court, subject to the approval of the Governor-general in Council, whether the jurisdiction be conferred in the one mode or the other. The proceedings should be of the most simple kind. The claimant should attend before the clerk of court, and state his case, the latter should bring the party before the judge, who should direct the entry of the plaint in a plaint-book, in concise and plain language, stript of all technical phrases, to its legal nature; then the defendant should be summoned to attend at a certain time and place, and the complainant ordered to attend at the same time and place. The defence should be entered in the same mode in the plaint-book, under the plaint; and by a process similar to the ancient oral pleadings, the points in dispute should be brought to certain issues, so as to diminish the amount of proofs. Thus the judge would be in a manner the legal adviser of both parties, who would rarely have occasion to resort to professional assistance. To give effect to this system, the judge should understand the elementary learning of pleading, but it would not be necessary that he should have practised as a pleader, or should be deeply learned. The process of the court should be served by its officers, and not entrusted to the parties; on failure of the defendant to appear, after proof that he had been summoned, the case should be heard *ex parte*; and the summons should notify that this would be the case in default of appearance. We think that the efficiency of the court would be greatly impaired if it were directed to proceed merely as a court of conscience, in the terms of the Act. The decisions of the court would not govern other cases, and the parties amenable to the tribunal would not, in the dealings out of which matter of litigation falling within the jurisdiction of the court might arise, be subject to any general and known rule of law. Litigation would increase with the increase of uncertainty, which the absence of a general law relating to the subject would occasion; and the inconvenience would be particularly great in a commercial place. Mr. Justice Grant objects to the admissibility of the evidence of the parties in their own favour, but this objection is not entertained by the chief justice and Mr. Justice Seton. Mr. Justice Grant thinks that if the evidence of the parties in their own favour be rendered admissible, no evidence should be rejected on the score of interest. The other judges think that, independently of this consideration, no witness should be deemed incompetent, either by reason of interest or any other cause.

We have, &c.
(signed) *Lawrence Peel.*
J. P. Grant.
H. W. Seton.

Court House,
14 September 1842.

Minute by the Honourable *A. Amos*, dated 18th September 1842.

Legis. Cons. 30 Sept. 1842. No. 2. Court of Requests.

I agree entirely with the judges that the clause about proceeding according to equity and good conscience, should be struck out of the Act.

I would allow the parties to be examined, and would do away with all objections to witnesses on the ground of incompetency.

I am not averse to excluding actions for assaults and for defamation, leaving the redress for these, as at present, in the Supreme Court.

With regard to the question whether a judge of the Supreme Court should preside, or whether a barrister judge should be appointed in the place of Mr. Hare, and who shall conduct the new business in the new manner proposed by the draft, the judges say that they cannot tell whether the business which would fall within the new jurisdiction could be all disposed of by them, and that an expense of 20,000 rupees

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20,000 rupees per annum must be incurred. There do not appear to be any means of ascertaining beforehand whether or not the extra business can all be disposed of by a judge; but if we made it only necessary for him to take cases involving points of law, or other matters of difficulty, and gave him a power, in case of an over-pressure of business, to transfer minor cases to the court of requests, I should think he would be able to lend all the assistance that was particularly required. It may be observed, that suits of the descriptions in question which are now brought, are very few indeed. It appears that the judges admit that they have considerable surplus time, which is at the command of government; and, by employing them in the manner proposed, the salary of a commissioner will be saved. Nor do I see very clearly why the 20,000 rupees extra expenses must be incurred; and I am not clear that the judges mean, that if a barrister were appointed to execute the powers of the Act, the same charge would not be incurred. The judges' clerks are at present much overpaid, and hold other offices. If any additional expense be incurred, a very slight fee would cover it, and the suitors still get their suits determined at vastly less cost than at present.

One argument in favour of a barrister being appointed to the court of requests, with Mr. Hare's salary, is, that a reference to England will not be necessary, which possibly might be thought necessary, before giving a new employment to one of the Queen's judges; but I am not clear that such necessity exists, particularly under present circumstances. I think that the new class of cases which it is proposed to take from the Supreme Court could be very satisfactorily disposed of by any barrister of five years' standing, competently versed in his profession. The Calcutta bar is already overstocked, and will be more so before the expiration of the year, so that there will be no great difficulty of procuring a competent person, and upon a moderate salary.

With regard to what the judges say about the mistakes of jurisdiction, I think their difficulty will be removed, if we leave it optional with suitors to bring actions of the descriptions proposed, either in the Supreme or petty court.

On the whole, I think it advisable to subject certain suits, of the nature and amount stated in the draft Act, to a new jurisdiction, with a procedure of the very simple kind as proposed by the draft, subject to the modifications suggested by the judges.

Whether this court shall be held by a judge, or a barrister appointed for the purpose, is, I think, not very material, except it may be thought so to a question of finance. If a judge conduct the business, his decisions will have greater authority, and be kept more regular, and expense will be saved, but he may not have enough time. If a barrister be appointed, his decisions will be sufficiently satisfactory, and he will have more time at command, but he will be more expensive. The arrangement of employing a barrister would probably be effected with greater facility.

(signed) *A. Amos.*

Legis. Cons. 30 Sept. 1842. No. 3.
Small Cause Court.

MINUTE by the Honourable *A. Amos*, dated 27th September 1842.

I CIRCULATE a draft for the establishment of a court for the decision of small causes. I agree in the expediency of the modifications suggested by Sir L. Peel; their adoption will, at all events, facilitate the arrangement.

I see no objection to publishing the draft before it is sent to Lord Ellenborough; his Lordship, in fact, has had the matter before him in its early stages. It is much wanted, as there is no doubt at present a denial of justice in many cases; and the judges of the Insolvent Court feel themselves disagreeably situated, and in danger of actions being brought against them for exceeding their jurisdiction, the limits of which the judges, in their official letter upon the subject of this Act, admit is not always free from doubt and difficulty.

When the question of salaries come to be investigated, the salaries and labours of the judges' clerks will require scrutiny; their salary is, I think, 800 rupees a month. One of the judge's clerks at present is also prothonotary and clerk of the Crown; and I believe, like the judges' clerks in England, the clerks have not been always persons of education, or of the class of gentlemen.

(signed) *A. Amos.*

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Legis. Cons. 30 Sept. 1842. No. 4. Enclosure.

From the Hon. Sir *Lawrence Peel*, Knight, to the Hon. *A. Amos*, Esq.

My dear Sir,

I HAVE looked over your draft Act which you have had the goodness to send us, and have added, in the margin, such alterations as suggest themselves to me, which I leave to your better judgment. I think it would be expensive to have written pleadings. It is so very uncertain what amount of business would grow up under this jurisdiction, that at present I can hardly guess whether we should or should not be able to work it in terms time and sittings; but I have every desire to do all for it, and will devote all the time I have to spare to it, if my health permit me. I think it not improbable, if the court works well, that plaintiffs will sue for less than their demand, to bring themselves within its jurisdiction. I did not think of a barrister relinquishing his practice, but retaining his practice, if any, and not abandoning his quest of it. All these courts, many of which have been recently introduced in England by Lord Cottenham under various local Acts, have practising barristers, their judges attending sessions and assizes close at hand, and no harm ensues. Here a negligent judge would be under immediate surveillance. I have no doubt that a competent man could be got for the money, but not if he gave up all hope of practice; but perhaps the objection to a barrister springs from other sources.

Nothing can be clearer than that, without an Act of the Legislature to establish this court, nothing could be done by the judges. They have no power whatever to impose any fee or charge, however trifling. They could not order any of their present officers, supposing them to have leisure for it, to do any duty in a wholly new station; and they would be without any of the sinews of courts, which can no more be carried on without money than can wars. Neither could they, of their own authority, legally establish in the proceedings all that it would be essential to establish.

We cannot prohibit the attendance of counsel or attornies; perhaps it would not be right to exclude the former, certainly not the latter. It would take away from the judges much practical difficulty if a clause were added, that no costs of employing counsel or attorney should be allowed on taxation of costs against the opposite party, unless the judge should certify, under his hand, that the case was one proper for the employment, &c.; nor against the client, unless at his own request counsel were employed, he being first informed that no fee to counsel would be allowed on the taxation of costs.

I wish to bring under your notice the Process Act, commonly termed the Reciprocal Process Act; I mean the one enabling the Queen's courts to cause the execution of the process of the courts of the Company in the mofussil, within the local limits of Calcutta, Madras, and Bombay. It was, I am informed, at the time when this Act was under consideration, the design to give like powers to the mofussil courts, so that they, if applied to by the parties, might execute a judgment or decree, &c. of the Supreme Court. This failed, by reason of some notion that it was *infra dig.* of the Queen's courts. I do not entertain this opinion, and should very gladly see the law altered. Our courts are now in their most palmy state of dignity. The sheriff's officers get generally soundly drubbed when they enforce the process of the court at a distance. Soon we shall be so high in estate, that no attention will be paid to our writs; and there is no knowing how high we may hold our heads when a sheriff's officer suffers martyrdom in support of the court's dignity.

Three or four sections of the present Act may readily be made applicable, *mutatis mutandis*, and a short clause enabling the judges or magistrates of the Company's courts to act as masters extraordinary of this court, when sanctioned by government, for the purpose of taking affidavits, &c. in the mofussil, would diminish greatly the costs of delegation here. If you lend a favourable ear to this proposal, I will send you a sketch of an Act for the purpose for your consideration.

Calcutta,
26 Sept. 1842.

Yours, &c.
(signed) *Lawrence Peel.*

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Legis. Cons. 30 Sept. 1842. No. 5.

FORT WILLIAM, LEGISLATIVE DEPARTMENT, the 30th September 1842.

THE following draft of a proposed Act was read in Council for the first time on the 30th of September 1842.

ACT No. —— of 1842.

An ACT for the better Administration of Justice within the Town of Calcutta, in small Causes not included within the jurisdiction of the Court of Requests.

1. It is hereby enacted, that from and after it shall be lawful for any one of the judges of Her Majesty's Supreme Court to hold a court for the hearing and decision of all matters for which a civil action at law will lie in the said Supreme Court except as hereinafter mentioned, according to the law there administered, subject to such modifications as are hereinafter authorized; provided, that the amount claimed by the plaintiff do not exceed 400 Company's rupees, and provided the suit be not founded on any demand of damages for an assault or battery, or for written or verbal defamation.

2. And it is hereby enacted, that suits at present cognizable by the court of requests shall be brought before that court as heretofore, and not before the judge holding the court indicated in the last section; provided that no judgment passed by the judge holding such court shall be impeached for error, or be held as extra-judicial on the ground that the suit ought to have been brought in the court of requests.

3. And it is hereby enacted, that the said Supreme Court shall make rules for the proceedings before a judge holding such court as is established by this Act; which rules shall regulate the manner of proceeding in the said court, viz. the institution of the suit, the entry of the plaint, the process, the entry of the defence, and other subsequent allegation by either party, and the practice of the said court, the fees to be taken, and the costs to be allowed: provided, that both plaintiffs and defendants be liable to be examined at the discretion of the judge, and that no witness be deemed incompetent to give testimony upon any ground whatever; provided further, that all such rules shall receive the confirmation of the Governor-general in Council before they are put in force.

4. And it is hereby enacted, that in order to reduce the costs of suit, and to render the same proportionate to the amount of the demand recoverable before the said court, the allegations of the parties be not entered in any written pleadings to be delivered between party and party, but be made orally before the officiating judge, and be by him directed to be entered in a book to be kept for that purpose, to be termed the book of pleadings of the said court, and be entered accordingly under his direction in untechnical and concise language, according to the legal effect thereof, to which books the parties shall have at all times access without the payment of any fee or reward.

5. And it is hereby enacted, that no costs of employing any counsel or attorney shall be allowed on the taxation of costs in any suit in the court hereby established, unless the judge who presided at the trial shall certify that the nature of the case was such as to render the employment of counsel or attorney expedient for the attainment of justice.

6. And it is hereby enacted, that the said Supreme Court shall, with the consent of the Governor-general in Council thereto previously obtained, and with the like consent previously obtained to the salaries hereinafter mentioned, appoint such officers as shall be necessary for transacting the business of the said court established by this Act, to be remunerated, as far as the same will extend, out of the fees of the said last-mentioned court; provided, that the fees hereby directed to be imposed shall be subject to the revision of the said Governor-general in Council from time to time, and that the same shall be reduced from time to time if the same shall be found to exceed the amount of the reasonable expenses of the maintenance of the said court, including all such salaries as aforesaid.

7. And it is hereby enacted, that all the power and authority vested in the Supreme Court in the case of civil actions shall be vested in every judge holding such court as is established by this Act.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 30th day of November next.

F. J. Halliday,
Officiating Secretary to the Government of India.

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Draft Act relating to Court of Requests.

(No. 73.)

From the Supreme Government to the Honourable the Judges of the Supreme Court at Fort William.

Legis. Cons. 30 Sept. 1836. No. 6.

Honourable Sirs,

Legislative Dept.

We have the honour to forward to you the accompanying printed draft of a proposed Act for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests, and shall feel obliged by any observations or suggestions you may offer on the subject.

We have, &c.
(signed) *W. W. Bird.*
W. Casement.
H. T. Prinsep.
A. Amos.

Council Chamber
30 September 1842.

Minute by the Honourable *A. Amos*, dated 7th December 1842.

Legis. Cons. 23 December 1842. No. 26.

Court of Requests.

What the commissioners desire, viz. a ratification of the usage which has always prevailed of the commissioners sitting singly, unless they see occasion, from peculiar circumstances, that they should sit together, is reasonable and proper. Such a provision was contained in the draft of the Law Commissioners, but I omitted it in the published draft, lest in the interim between the publishing and passing of the Act, parties should avail themselves of the objection, and perhaps recover damages against the commissioners. When the Act passes, a provision should be introduced authorizing the commissioners to sit singly, and making all decrees heretofore passed by them singly free from impeachment.

(signed) *A. Amos.*

(No. 2556.) (No. 36 of 1842.)

From the Secretary to the Government of Bombay to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, in the Legislative Department.

Legis. Cons. 23 December 1842. No. 27.

Sir,

Judicial Dept.

With reference to Mr. Secretary Maddock's letter, No. 33, dated the 5th of April 1841, I am directed by the Honourable the Governor in Council to transmit to you, for the consideration of the Honourable the President in Council, copies of the documents noted in the margin, relative to the expediency of extending to Bombay the proposed Act "for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests."

Letter from the Advocate-general, of the 28th October 1842, with Enclosure.
Memorandum by the Judicial Secretary, dated 31st October 1842.
Minute by the Honourable Board (without date).
From the Chief Justice of the Supreme Court of Judicature (without date).
Minute by the Honourable the Puisne Judge, dated 17th November 1842.

I have, &c.
(signed) *J. P. Willoughby,*
Secretary to Government.

Bombay Castle,
3 December 1842.

From the Advocate-General to the Secretary to Government of Bombay.

Legis. Cons. 23 December 1842. No. 28. Enclosure.

Judicial Dept.

Sir,

Having observed in the Government Gazette of Thursday, the 20th instant, a draft Act published "for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests," and it being very desirable that a similar law should exist in Bombay, I have

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have the honour of bringing the subject to the notice of the Honourable the Governor in Council, with a view to having the Act extended to this presidency.

2. Government are probably aware, that the jurisdiction of the court of requests at Calcutta extends to cases amounting in value to 400 rupees, while the jurisdiction of the court of requests at Bombay is limited to demands of 80 rupees. At this presidency a court is held weekly, by one of the judges of the Supreme Court, called the Small Cause Court, for the trial of cases of simple contract, between rupees 80 and not exceeding 350 rupees, in which the scale of fees is moderate, although higher than that of the court of requests.

3. The legality of this small cause court's jurisdiction has occasionally been doubted, and from its limited powers, as well as those of the court of requests, defects of justice are frequently experienced, for which the present Act would provide a remedy.

4. As to the defects, I would instance cases of torts and trespasses, where property has been wrongfully possessed, or wrongfully detained from the right owner, and involving questions of right and title to the property in dispute, and which can only be adjudicated upon in the Supreme Court, the courts of requests at Calcutta and Bombay having jurisdiction only over the contracts of the parties, and the expense of litigating in the Supreme Court cases of torts and trespasses, and questions of title, where the amount or value of the property is small, is a bar at once to litigating them.

5. I have therefore modified the Act, as proposed, for Calcutta, and with the alterations and additions, which I have marked in italics, I now beg to submit it for the consideration of the Honourable the Governor in Council, in order that it may, if approved of, be forwarded to the Legislative Council.

6. Though the Act will, I presume, before transmission to Bengal, be sent to the Honourable Judges of the Supreme Court here for their approval and remarks, I may observe that I have already communicated with one of them, Mr. Justice Perry, on the subject, and have his permission to state that he is in favour of the extension of the Act.

I have, &c.
(signed) *A. S. Le Messurier,*
Advocate-General.

Advocate-General's Office, Bombay,
28 Oct. 1842.

(True copy.)

(signed) *J. P. Willoughby,*
Secretary to Government.

Legis. Cons.
23 December 1842.
No. 29.
Enclosure.

DRAFT ACT referred to in the annexed Letter.

AN ACT for the better Administration of Justice within the Towns of Calcutta *and Bombay,* in small Causes not included within the Jurisdiction of the Courts of Requests *established at either of those Places.*

IT is hereby enacted, that from and after it shall be lawful for any one of the judges of Her Majesty's Supreme Courts *at Calcutta and Bombay* to hold a court for the hearing and decision of all matters for which a civil action at law will lie in the said Supreme Court, except as hereinafter mentioned, according to the law there administered, subject to such modifications as are hereinafter authorised, provided that the amount claimed by the plaintiff do not exceed 400 Company's rupees, and provided the suit be not founded on any demand of damages for an assault or battery, or for written or verbal defamation.

And it is hereby enacted, that suits at present cognizable by the courts of requests *of Calcutta and Bombay* shall be brought before ~~that~~ *those* courts as heretofore, and not before the judge holding the court indicated in the last section; provided, that no judgment passed by the judge holding such *last-mentioned* courts shall be impeached for error, or be held as extra-judicial, on the ground that the suit ought to have been brought in ~~the~~ *either of the said* courts of requests.

And it is hereby enacted, that the said Supreme Courts *of Calcutta and Bombay respectively* shall make rules for the proceedings before a judge holding such courts as ~~is~~ *are* established by this Act, which rule shall regulate the manner of proceeding

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ing in the said court, ~~viz.~~ *respectively including* the institution of the suit, the entry of the plaint, the process, the entry of the defence, and other subsequent allegation by either party, and the practice of the said court, the fees to be taken, and the costs to be allowed. ~~Provided~~.

This properly does not appear to be a proviso, but a fresh enactment.
(signed) *A.S.L.M.*

And it is further enacted, that both plaintiffs and defendants *in any suits to be tried in such court shall* be liable to be examined at the discretion of the judge, and that no witness be deemed incompetent to give testimony upon any ground whatever; and *that it shall be lawful for the judge to adjourn the case, if he shall see fit, for the purpose of obtaining further evidence, and also to order and direct the amount of any judgment recovered by the plaintiff to be paid by instalments, in such manner as to him shall seem reasonable and just, and in any case of difficulty to direct the cause to be tried in the Supreme Court: provided always, that the parties shall be at liberty to move for a new trial, or to appeal from the decision of the sitting judge to the Supreme Court, in such manner and under such restrictions and qualifications as shall be specified in the said rules:* provided further, that all such rules shall receive the confirmation of the Governor-general in Council before they are put in force.

And it is hereby enacted, that in order to reduce the costs of suit, and to render the same proportionate to the amount of the demands recoverable before the said court, the allegations of the parties be not entered in any written pleadings to be delivered between party and party, but be made orally before the officiating judge, *or some proper officer appointed by him for that purpose*, and be by him directed to be entered in a book to be kept for that purpose, to be termed the book of pleadings of the said court, and be entered accordingly, under his direction, in untechnical and concise language, according to the legal effect thereof, to which books the parties shall, *on due notice previously given for such purpose*, have at all ~~times~~ *reasonable hours* access, without the payment of any fee or reward.

And it is hereby enacted, that no costs of employing any counsel or attorney shall be allowed on the taxation of costs in any suit in the court hereby established, unless the judge who presided at the trial shall certify that the nature of the case was such as to render the employment of counsel or attorney expedient for the attainment of justice.

And it is hereby enacted, that the said Supreme Court shall, with the consent of the Governor-general in Council thereto previously obtained, and with the like consent previously obtained to the salaries hereinafter mentioned, appoint such officers as shall be necessary for transacting the business of the said court established by this Act, to be remunerated, as far as the same will extend, out of the fees of the said last-mentioned court; provided, that the fees hereby directed to be imposed shall be subject to the revision of the said Governor-general in Council from time to time, and that the same shall be reduced from time to time if the same shall be found to exceed the amount of the reasonable expenses of the maintenance of the said court, including all such salaries as aforesaid.

And it is hereby enacted, that all the power and authority vested in the Supreme Court in the case of civil actions shall be vested in every judge holding such court as is established by this Act.

And whereas the Supreme Court of Judicature at Bombay has for many years past held a court under the denomination of the Small Cause Court, for the decision of small causes in which the amount in dispute does not exceed 350 *rupees in value, under certain rules framed specially for the purpose of administering justice therein: And whereas the jurisdiction so exercised, although it has been found very beneficial, is not sufficiently extensive, and doubts have occasionally been entertained as to the legality of such a jurisdiction, and it is expedient that such doubts should be removed and a sufficiently extensive jurisdiction in small causes created; Be it therefore enacted, that all proceedings and all acts heretofore done by or under the authority of such court so denominated the Small Cause Court as aforesaid shall be deemed and taken to be good and valid in law, to all intents and purposes, and the legality thereof shall not be disputed or questioned in any court of justice, and that henceforth the administration of justice in small causes within the town of Bombay shall, to the*

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amount of rupees 400, *be carried on by the court established by this Act, under the rules to be framed as aforesaid.*

Submitted for the approval of government.

(signed) *A. S. Le Messurier,*
Advocate-general.

(True copy)
(signed) *J. P. Willoughby,*
Secretary to Government.

Legis. Cons 23 December 1842 No. 30. Enclosure.

MEMORANDUM by the Judicial Secretary.

A SUMMARY of the correspondence with the government of India, on the application of this government that an Act might be passed for assimilating the constitution of the Bombay court of requests to that of Madras, is contained in the despatch to the Honourable the Court of Directors, No. 4, dated the 1st of February 1841.

2. The reason assigned by the government of India for the delay which has occurred in passing the proposed Act, was "that the subject of the constitution and powers of the courts of request at the several presidencies was before the Law Commission, from whom a report was soon expected." *See* Mr. Secretary Maddock's letter, No. 33, dated the 5th of April 1841.

3. If government approve of the suggestions submitted in Mr. Le Messurier's letter, that the provisions of the proposed Act published on the 30th of September last, "for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests," may be extended to Bombay, a copy of his letter and of the draft Act, as altered by that gentleman in italics, may be forwarded for the consideration of the government of India, with reference to Mr. Maddock's letter above quoted.

4. As the proposed Act is ordered to be considered after the 30th instant there will scarcely be time to consult the judges of the Supreme Court, as proposed in the last paragraph of Mr. Le Messurier's letter, before forwarding the draft Act to Calcutta.

31 October 1842. (signed) *J. P. Willoughby.*

(True copy)
(signed) *J. P. Willoughby,*
Secretary to Government.

Legis. Cons. 23 December 1842. No. 31.

MINUTE by the Honourable Board.

I THINK the best course would be, in the first instance to send this to the judges of the Supreme Court, to request any observations that may occur to them, in order that such observations may be laid before the government of India in forwarding the proposed Act. It seems to me that the Act renders more perfect the present small court now held by the judges of the Supreme Court sitting singly.

(signed) *G. W. Anderson.*
G. Arthur.

(True copy.)
(signed) *J. P. Willoughby,*
Secretary to Government.

Legis. Cons. 23 December 1842. No. 32.

From the Honourable *H. Roper*, Knight, Chief Justice of the Supreme Court of Judicature, Bombay, to the Hon. the Governor and the Council of Bombay.

Honourable Sirs,

UPON the 16th instant the judges had the honour to receive your letter requesting the proposed Act for the trial of small causes. Sir E. Perry has requested me to

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to say, that as his absence from Bombay prevents him from joining with me in a letter to the government, he thought it best to embody his view in a Minute. That Minute I have the honour to enclose.

The jurisdiction of that branch of the Supreme Court at Bombay called the Small Cause Court is limited to actions for debts and liquidated damages, in which the cause of action shall not be less than 80, or more than 350 rupees. In order to bring a case within the jurisdiction, a party is allowed to relinquish a portion of his claim, or to sue for but one or more instalments of a large sum agreed to be paid by instalments; and for the like end, in many instances, the party waives a tort and sues in form *ex contractu*. Upon the whole, although in a court constituted under the proposed Act some cases might come forward in different forms from those usual in the present small cause court, I doubt whether the number of cases brought before the former would much exceed the number disposed of in the latter. That the constitution and rules of the small cause court at Bombay might be improved, it is not my purpose to deny, and it seems most desirable to establish uniformity in the modes of administering justice by the several Supreme Courts in India; for the attainment of that object, great efforts should be made, though I should regret it were accomplished by extending to Madras or Bombay provisions so objectionable as, in my opinion, are some of those contained in the proposed Act for establishing a new court at Calcutta, and in the projected modification thereof brought to your notice by the Advocate-general.

The removal of all objections to the competency of witnesses, and the rendering parties to actions liable to be examined, at the discretion of the judge, are provisions I wish extended to all judicial investigations of facts; but I carry still further the principle, that the best mode of eliciting truth in small matters must be equally efficacious where more important interest are at stake. The amount in dispute is no criterion of the difficulty of deciding with respect to it, and if the proposed Act prescribe the best mode of administering justice, it should extend to matters of whatever value; but if the mind justly recoils from the idea of submitting important interests to the decision of a single judge, uncontrolled by jury, or public opinion, unadvised, or unchecked by counsel, and from whom there is no appeal, provisions for such a purpose must be faulty, and if not altogether rejected, their application should be very limited. I would at least except from the operations of the proposed Act, not merely actions for assault and defamation, but also actions in which the title to land is in dispute, and perhaps also actions upon policies of insurance. Usually there is much difficulty in cases of the last-mentioned class, and the parties interested are wealthy. Questions of title to land, other than as between landlord and tenant, generally involve much intricacy as to law or fact, and the marked value of the land is an imperfect criterion of its importance. A plan might be devised whereby either party to an action on a policy, or regarding the title to land, might cause such action to be instituted or tried in the Supreme Court, upon terms as to costs, pleadings, and proceedings, and where actual poverty presented an obstacle, the office of the attorney for papers should be a sufficient resource.

The fourth clause of the proposed Act for establishing a small cause court at Calcutta seems to me to be defective, and in some degree improved upon by Mr. Le Messurier. It provides that the allegations of the parties be not entered in any written pleadings to be delivered between the parties, but be made orally before the officiating judge, and be by him directed to be entered in a book. The delivery of pleadings between the parties may well be dispensed with; but it can scarcely be intended, either that no pleading shall take place between the parties before trial, but that at the time of trial the parties shall plead orally, and their allegations be then entered in a book before the judge, or if the allegations of the parties are to be made orally and entered in a book before trial, that we are to revert to the exploded practice said to have prevailed up to the reign of Edw. 3, and that a judge is to attend in order to direct the making or entering such allegations, and should thus perform the duty of a professional clerk; and yet such interpretations are not inconsistent with a clause so framed. To ascertain the subject for decision and render it ripe for trial, it seems expedient that before trial the parties make statements of their respective cases, and that such statements, being in effect the pleadings, be reduced to writing. The entering them in a book to which easy access can be had, instead of having them filed and copies delivered between the parties, is no doubt a salutary measure so far as it tends to decrease expense. But the collecting the mutual altercations of the parties, the rendering

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them to form, and the so directing them as to ascertain the issues, can be done by any professional man of ordinary ability as well as by a judge. Such duties are performed with tolerable efficiency by the clerk of the small cause court at Bombay. He prepares the pleadings of the parties, in which strictness is not required or permitted, and the court takes care that errors of the clerk shall not prejudice the parties.

The provision in the proposed Act that the allegations shall be entered in untechnical language, may be objectionable, because technical language, if generally understood, may be the best. Considering the late improvements in pleading, the provision will be unnecessary, and being a primary rule instead of a provision against excessive strictness, it might perhaps be relied upon as sanctioning what is illogical, or the result of ignorance or neglect. It might be better to provide to the effect that no pleading or proceeding shall be held invalid on account of verbal or technical error, and that errors or mistakes, which shall not have misled the opposite party, shall be deemed merely technical or verbal.

However moral and merciful it may be in a creditor to patience with his debtor, instead of casting him into prison, I doubt whether it be equitable in a judge to decree, with the creditor's consent, that a debt instantly due, and for which no pledge or mortgage has been given, shall be paid by instalments. I am not aware of any court, except the castor court and the court of requests at Bombay, in which such a practice prevails; and the enactment authorizing such practice in the castor court is spoken of by Lord Denman (1 Gale & Davidson, page 272) as an "enactment in which all analogy with the proceedings in the ordinary courts of law is departed from." Unless the practice existed in the court of requests at Bombay prior to the 37 Geo. 3, c. 142, s. 30, its legality may be questioned. In the small cause court it is frequently ordered, with consent of the creditor, that the debt be paid by instalments, and execution of issue accordingly. Without such consent, I fear a judge's decree for payment by instalments would often be given arbitrarily or at random, and by precluding the creditor from taking out speedy execution, the whole or part of the debt might eventually be lost, through the debtor's misfortune or misconduct: such matters should, I think, be arranged between the parties. If a creditor have sense to perceive his own interest, he will often give time for payment; on the other hand, he may be obdurate or unreasonable, or he may fear that by delay on his part other creditors will carry off the debtor's property. Ill consequences in particular instances may thus arise; but how can a judge vary or relax the general rule so as to meet the exigencies of the particular case and go no further? To enable him to do justice in such matters, additional pleadings and evidence as to the property, prospects, industry, and character, &c. of the respective parties would be requisite. It might be less objectionable to provide that execution should not issue for a debt recovered in the projected court until some long but fixed period after judgment had been obtained, for such a provision would at least be a general rule.

In each of the Supreme Courts a single judge can try any action in the absence of the other judge or judges of the court, but it is certainly desirable that cases of any difficulty should be tried before a full court. Difficulties as to law or fact must thus be disposed of, in the first instance, without the delay or expense of further arguments, motives for new trials, and similar applications. A court composed of three judges is (*ceteris paribus*) better than a court with only two judges; but it appears to me that a court consisting of two judges is better than a court in which there is but one. Where there are two judges, and they concur, there is less room for believing the decision may be erroneous; should they differ, the judgment of one will, under ordinary circumstances, have great weight with the other, and should one have the casting voice, he will scarcely give effect to his opinion without due deliberation. For these reasons, the projected court, as consisting but of one judge, and without entering into further considerations, might in some degree be objectionable; but it will not be denied that cases free from intricacy may be committed to a single judge. The proposed Act, however, make the value in dispute, exclusive of the simplicity or intricacy of the subject, the criterion of jurisdiction; and though the removal of difficult cases into the Supreme Court, as proposed by the advocate-general, were sanctioned, as the permission for such removal would altogether depend upon the discretion of the judge, I fear the benefit derivable from such a provision would be variable and uncertain.

The giving a right of appeal is no doubt an improvement, as forming some slight check upon the single judge, but due provisions for the administration of justice in

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in the first instance would be more valuable; and such provisions do not, I think, exist where it is left to a single judge to determine whether a case is of such difficulty that he is incompetent to decide it, and where counsel are, in effect, to be excluded from the court.

There is no expression of sound public opinion in India, and I am convinced the presence and intervention of professional men are in this country the most efficient checks upon the errors and infirmities of a judge. In the small cause court of Bombay the fee to counsel (only one counsel on each side being allowed) is limited to two gold mohurs, and the number of cases in which counsel are employed is comparatively few; still the ready access had by counsel to that court, and their occasional presence therein operates, I believe, most beneficially upon the judge and officers of court, in restraining any tendency to use power in an arbitrary manner, or to indulge in carelessness or neglect. It should not, I think, be permitted to a judge to say that his judgment could not be influenced by the arguments of counsel, or his skilful conduct of the case. Where abuses arise from the employment of counsel, they can be adequately corrected by such discretionary power to grant or withhold costs as is exercised in the small cause court in Bombay; but a preliminary rule that no costs of employing counsel shall be allowed unless the judge who presided at the trial shall certify the case, was such as to render the employment of counsel expedient, would virtually close the court against counsel; and the power to grant or refuse the certificate, if called into action, might often be capriciously exercised.

I had understood the suspension of the Bombay bar arose from an attempt to render the judges parties to a combination for the purpose of fixing or increasing the fees of the profession, and that complaints as to the small cause court formed only a minor incident in the transaction: the exact particulars, if worth inquiring into, might be ascertained from the advocate-general, who was himself one of the barristers suspended.

As the small cause court has existed about 20 years, without having been resisted or successfully impugned, and as the rules regarding it were long ago approved of by the King in Council, a declaration that such court shall not be held to have been illegal would, in my opinion, be most injudicious and uncalled for.

The proposed Acts speak of the court or courts to be established as different from and not a branch or branches of the Supreme Courts respectively; each of the intended courts, if established, will in effect be a new court, and according to the extent of its jurisdiction, will be virtually an abolition of a Supreme Court. I therefore doubt whether the Legislative Council has power in itself to pass the proposed Act under the 3d & 4th Will. 4, c. 85, s. 43 & 46, especially as erecting a new court of justice affects a prerogative of the Crown.

I have, &c.
(signed) *H. Roper.*

(True copy.)

(signed) *J. P. Willoughby,*
Secretary to Government.

MINUTE by the Honourable Sir *E. Perry*, Knight.

Legis. Cons. 23 December 1842. No. 33. Enclosure.

1. I THINK the proposed Act will be highly beneficial to the inhabitants of Bombay, and that it affords a remedy for many classes of injury which at present are wholly unredressed; but as I understand the judges at Calcutta are anxious to have their Act passed immediately, I believe it will be found necessary to have a separate Act drawn for this presidency.

2. As this Act contains some provisions new to the law of England, and also differs in some respects from the Calcutta Act, I am desirous of making a few observations upon it.

3. The principle of allowing the parties to the suit to be examined (s. 4), though not quite new, for the Irish Civil Bill Court Act, 6 & 7 Will. 4, c. 75, s. 36, has a similar clause, is more broadly expressed than it has hitherto been; the removal of incompetency in any witness is, I believe, quite new in English legislation, although

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although an approximation towards the principle has been visible both in the legislature and in judicial decisions for some years past. I approve of the new enactments so highly, that I should wish to see them made applicable to all judicial proceedings whatever, as I conceive that what is found to be the best mode of eliciting the truth in small matters must also be equally efficacious in matters where larger sums or more important interests are at stake.

4. The Bombay Act contains a clause allowing execution to issue by instalments, as in the courts of request, and I think it will be found an improvement on the Calcutta draft. I believe that many of those who now go to gaol upon executions issuing against them from the small cause court, and who take the benefit of the Act, would pay their creditors in full if time were given them, with the process of the court hanging over their heads to enforce the obligation; the payment of debts by monthly instalments, besides, enters so much into the manners of the people, that it seems desirable to encourage it by legislation.

5. Section 4 of the Bombay draft enables the judge to remit any case of difficulty to the full court, and a new trial to be moved for, and appeal made by either of the parties.

This provision is not in the Calcutta draft, but I think it is, on the whole, an improvement; I think no judicial system good that does not allow of an appeal, and if the Bench here were full, the appeal from one judge to three would probably be attended with beneficial effects; but a judicial establishment of two judges is in my opinion so faulty in principle as to make an appeal nearly wholly useless; but the power of the judge to remit a cause, or to reserve a point of law for the full court, is wholly different, and I think it a most desirable power to be committed to him. When actions such as trespass, trover, and ejectment are brought in the small cause court, it will occasionally occur that a nice point of law will arise affecting the whole community; a question of jurisdiction, for instance, or some floating point that has been a *vexata quæstio* for years; the judge would be unwilling to decide such a matter off-hand, and it would not be desirable for the public that he should do so; I therefore think in such case he should have the power of reserving the point for full discussion in the court above, and possibly, as it would be hard upon the parties that a matter of general interest should be discussed at their expense, it might not be objectionable that the judge should have a discretionary power to order the paupers' attorney to give briefs to counsel to argue the point in question. I may also observe, that an objection which may be raised as to the expense and encouragement of litigation which will be caused by allowing new trials to be moved for, has never been found to occur in practice in the small cause court at Bombay, where such a power has always existed.

6. It appears to me desirable that the Act should contain a clause defining the value of the lands as to which actions may be brought in the small cause court; this will most probably be a fruitful subject of litigation, and the question seems at present left *in ambiguo*. By the Irish Act, 5 & 6 Will 4, c. 75, the subject-matter in lands is governed by the annual rent, and limited to 20*l.* a year.

7. The Calcutta Act enacts that the pleadings shall be taken orally before the officiating judge; but if the number of causes to be tried there shall bear any proportion to those tried at Bombay, the time of the officiating judge will be engrossed almost daily by listening to pleadings that contain no real matter of controversy; thus at Bombay the causes entered in the small cause court were as follows:

1839 - - - - -	737
1840 - - - - -	643
1841 - - - - -	653

But the causes tried were only

1839 - - - - -	122
1840 - - - - -	119
1841 - - - - -	93

the remainder being settled out of court, without any interposition of the judge; consequently, it appears to me that the Bombay mode of having the pleadings taken out of court, and which may be done with advantage orally, is an improvement.

8. Lastly. I wholly object to the declaratory enactment in sec. 9, as to the legality of the Bombay small cause court. The court in question was established by the first recorder, Sir William Syer, in 1799, to the extent of 175 rupees, although a somewhat

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somewhat similar court for small causes seems to have long existed heretofore under the name of the Mayor's Private Court. The small cause court having proved beneficial, Sir Alexander Anstruther, in 1818, raised the jurisdiction to the amount at which it now stands, rupees 350. When Sir Edward West came upon the bench, in 1823, the practice seems to have existed in the court of examining the parties to the suit on oath, of allowing execution to issue bit by bit, and other practices, against the legality of which the bar memorialized, and they contended that the rules of court differing from those of the common law, and never having been confirmed by the King in Council, were altogether without authority. Sir Edward West suspended the bar from practice for six months in consequence of their memorial. But on the establishment of the Supreme Court some years afterwards, Sir Edward West and the other judges modified the rules of court, and the rules so revised were confirmed by his Majesty in Council. With this sanction, therefore, and at this length of time, it appears to me wholly useless and inexpedient to raise questions of jurisdiction which have been unmooted for nearly 20 years.

(signed) *E. Perry.*

Bombay, 17 Nov. 1842.

(True copy.)

(signed) *J. P. Willoughby,*
Secretary to Government.

(No. 106.)

From *F. J. Halliday,* Esq. Officiating Secretary to the Government of India, to the Honourable the Judges of the Supreme Court at Fort William, dated the 23d December 1842.

Legis. Cons. 23 December 1842. No. 34.

Honourable Sirs,

Legislative Dept.

With reference to our letter, No. 73, dated the 30th September last, we have the honour to transmit to you copy of a draft Act for extending to Bombay the proposed Act for the better administration of justice within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests, submitted by the government of Bombay, and shall feel obliged by an opinion whether this draft Act and that for Calcutta should be kept separate, or might conveniently be consolidated ; and whether it may be expedient to adopt any of the provisions of the proposed Act in amendment of that published for Calcutta.

We have, &c.

(signed) *W. W. Bird.*
W. Casement.
H. T. Prinsep.
A. Amos.

— No. 6. —

No. 6.
Application with respect to Native Christians.

APPLICATION OF MISSIONARIES TO REMEDY THE DISABILITIES OF NATIVE CHRISTIANS.

Legis. Cons.
10 May 1841.
No. 21.

To the Right honourable the Governor-General of India in Council.

The undersigned Memorialists beg permission to state—

1. That your memorialists are deeply interested in the welfare of their Indian fellow-subjects, and specially of one class of their already numerous, daily-increasing, and likely (as it is hoped and expected) to embrace eventually the great body of the people.

2. That the class of men referred to is that important and influential one which consists of those who, through the natural and inevitable operation of the educational and other measures now pursued by government, public societies, and private individuals, have been driven to repudiate the irrational rites and forms of idolatry and superstition; as also of those who, besides abandoning the hereditary creed of their fathers, have been led by the light of Divine knowledge, brought home to their understandings and hearts, openly to profess the Christian faith, and become members of the Christian church.

3. That this twofold class, in common with others, not of the Hindoo or Mahomedan persuasion, such as East Indians, Greeks, Jews, Parsees, and Armenians, at present labour under sundry legal disabilities of a specific character, and are also felt in reference to many other momentous civil concerns and relationships, without any laws to guide and direct them.

4. That among the grievances more immediately referred to, and loudly and very generally complained of, may be specified the following:

1st. The effects of the coercion, and it it may be cruelties, to which the religious bigotry of parents and guardians may subject those under legal age, who, as the result of enlightened conviction, arising from improved education, and other means, are impelled to renounce their ancestral religious opinions, and adopt others instead.

2d. The loss or total forfeiture of lands, goods, and other property to which such conscientious remuneration may (in certain circumstances and particular localities) render them liable.

3d. The defects of the laws relative to marriages and rights of inheritance of all classes of persons who may not be of purely British, Hindoo, or Mahomedan descent.

5. That the classes of our Indian fellow-subjects now mentioned, are already much oppressed under the foregoing and other similar grievances, and are likely to be yet more oppressed, and that therefore speedy relief and adequate remedy is anxiously desired and earnestly prayed for.

6. That as a full enumeration of particulars would prove of too great length for insertion in the body of this memorial, a statement of the more prominent facts, natural principles, legal enactments, and remedial suggestions, will be found in the documents appended.

7. That should your Lordship in Council be too deeply occupied with other national affairs to allow the present subject to engage your personal attention, your Lordship is respectfully and humbly requested to refer this memorial, with the appended documents, to the Law Commissioners, with a recommendation that they take it into immediate and serious consideration, and prepare without delay the drafts of general and comprehensive laws, by which the grievances to which attention has now been directed may be removed, and appropriate remedies applied.

8. That as the names of some of your Lordship's predecessors are destined to go down to posterity enshrined in the heartfelt homage of tens of thousands of the native inhabitants of her Britannic Majesty's Indian empire, who, in consequence of

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of the peaceful and patriotic reform of abuses, have been delivered from the tyranny of many prescriptive usages, and the arbitrary enaction of many despotic laws, your memorialists earnestly hope that your Lordship will be privileged to bear away from these vast realms some similar civic trophies; and, not content with the crown of conquest, will be led by an overruling Providence, to seek a more true and lasting fame in the redress of oppressive grievances, the amelioration of barbarous legal codes, the purification of the founts of equitable right and judicial power, and the grateful tribute of admiration and esteem spontaneously rendered by a relieved and benefited people, and re-echoed in hearty response from age to age.

(signed)

George Gogerly	London Miss. Society.
Alexander Duff	Church of Scotland Miss.
David Ewart	Church of ditto ditto.
Carapiet Chater Aratoon	Baptist Missionary.
A. F. Lacroix	London Miss. Society.
J. Hœberlin	Church of England Minister.
W. Sinclair Mackay	Church of Scotland Miss.
James Bradbury	London Miss. Society.
John Francis Osborne	Church Miss. Society.
R. de Rodt	London Miss. Society.
J. Macdonald	Church of Scotland Miss.
James Innes	Church of England Miss.
Thos. Smith	Church of Scotland Miss.
W. W. Evans	Baptist Missionary Society.
Timothy Sandys	Church of England Miss.
George Small	Baptist Missionary.
J. Wenger	Ditto.
T. Morgan	Ditto.
James Long	Church Miss. Society.
James Thomas	Baptist Miss. Society.
Thomas Boaz	London Miss. Society.
J. Ch. Wendnagel	Church of England Miss.
John D. Ellis	Baptist Missionary.
W. Yates	Ditto.

MINUTE on the Rise, Progress, and present State of Indo-British Law; the Rights of Parents over Children under legal Age; and the Hindu and Muhammadan Laws of Inheritance.

Legis. Cons. 10 May 1841. No. 22. Enclosure.

Minute on Indo-British Law, &c.

[*N. B.*—THE monthly conference of missionaries of all denominations, resident in Calcutta, appointed, several months ago, a standing committee of their number to investigate certain subjects connected with the evangelization of the natives, together with such other questions bearing on their general improvement as might from time to time arise; the committee to consist of the Rev. Drs. Hæberlin and Duff, the Rev. Messrs. Lacroix, Ellis, and Boaz; Dr. Duff to be chairman. Already have various matters of importance been investigated, and fully reported to the monthly conference; of these there are several that demand the adjustment of a legislative interference. To enable those concerned to determine what measures ought to be adopted in order to secure such adjustment, the chairman of the committee, in the case of two of the more urgent of these subjects, embodied the information and views of himself and coadjutors in the form of a minute, which he laid on the table at the last meeting of the conference. It was then unanimously resolved that, with a view to stir up the inquiries and elicit the co-operation of all who are interested in the amelioration of the natives, this minute should be published in the Calcutta Christian Observer. In accordance with this resolution, it is now printed in an extra number. It is proper, however, to add, that in all that follows, both as to subject-matter and language, the author holds himself alone as strictly responsible; and may we not hope, that those who long and labour for the temporal and eternal prosperity of the millions of a benighted and besotted people will be aroused to lend a helping hand for the removal of every barrier that tends to impede the dissemination of truth, whether human or divine?]

I.—*The Rise, Progress, and present State of Indo-British Law.*

OF the numerous external obstacles which so powerfully impede the progress of divine truth in this land, not a few are connected with the ancient laws and prescriptive usages of an idolatrous and demi-civilized people. If all of these were enforced with unmitigated severity, there could scarcely be any inquiry at all into any system of truth, the vital reception

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reception of which must lead to an utter abnegation of the hereditary faith. Divine Providence, however, has often graciously interposed to save infatuated man from the pit which he has laboriously dug for himself. In the present instance, the lapse of time and the uncontrollable issues of conquest have been overruled for ushering in many a salutary change. Not a few of those barbarous laws and usages which offered violence to the dictates of common reason, and shocked the feelings of common humanity, have now fallen into practical desuetude, or have been partly abrogated and partly modified by Muhammadan emperors and British legislators. Still much, very much, remains which demands the touch of a reforming hand, more skilful far than any which magician ever wielded in story or in song.

In order to understand aright the nature of still existing evils, and the possible modes of amelioration, it is necessary to take a preliminary glance at the present state of law as modified or administered by British rulers. This we are enabled to do, from the mass of information supplied in Harington's Analysis, without much expense of time or of labour.

For many years subsequent to the battle of Plassey, when Eastern India virtually became subject to the Crown and sovereignty of Great Britain, nothing, beyond a few isolated regulations, chiefly of a fiscal or commercial character, was attempted towards the formation and establishment of an uniform and equitable code of jurisprudence. In the year 1772, however, the Court of Directors having resolved to take upon themselves the entire care and management of internal government, it was felt to be incumbent upon them to adopt corresponding measures for its efficient administration. For this purpose, accordingly, a plan was prepared by the then governor, Warren Hastings, on the express principle of adapting its provisions " to the manners and understanding of the people and exigencies of the country, adhering, as closely as possible, to their ancient usages and institutions."

In 1773 the business of Indian legislation was, for the first time, vigorously entered upon by the British Parliament. By an Act of that year, viz. statute 13 Geo. 3, c. 63, it was enacted, that for the " whole civil and military government of the presidency of Fort William in Bengal, and also the ordering, management, and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, there should be appointed a Governor-general and four councillors." By the same Act the King was empowered, for the due administration of justice, " to erect and establish a Supreme Court of Judicature at Fort William, to consist of a chief justice and three other judges."

By subsequent explanatory enactments of the same date, the respective jurisdiction of these two supreme and independent authorities was accurately defined.

By Act 21 Geo. 3, c. 70, it was declared that the power of the Supreme Court was to extend to " all persons residing within the town of Calcutta, as well as to British subjects (natives of Great Britain, or their descendants) resident in any part of the provinces of Bengal, Behar, and Orissa;" also to " certain descriptions of the natives of India, though not inhabitants of the town of Calcutta, on account of their being employed by the Company, or by any of his Majesty's British subjects." By a subsequent statute, the jurisdiction of the court was farther extended " over all his Majesty's British subjects in India, or elsewhere within the limits of the Company's extensive trade." While the extent of the court's jurisdiction was thus expressly defined, there was a like specific enactment relative to the laws which must be administered. In the case of all British-born subjects, the laws of England were to be applied as interpreted and enforced by British courts of justice. In the case of natives of this country it was especially enacted and provided, that " their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Muhammadans, by the laws and usages of Muhammadans; and in the case of Gentoos, by the laws and usages of Gentoos; and where only one of the parties shall be a Muhammadan or Gentoo, by the laws and usages of the defendant." Still farther, " in order that regard should be had to the civil and religious usages of the said natives," it was enacted, " that the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentoo or Muhammadan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the law and rule of caste, respecting the members of said families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England." Last of all, while the court was empowered to frame forms of process which might be observed in all suits, civil or criminal, against the natives, it was expressly enacted that it should be " such forms of process, and such rules and orders for the execution thereof, as might accommodate the same to the religion and manners of such natives, so far as the same may consist with the due execution of the laws and the attainment of justice."

By these Acts of Parliament the juridical functions of the Supreme Court are peremptorily limited to British-born subjects in India, or their descendants, as also, with a few specific exceptions, to the native inhabitants of Calcutta alone; while it is rendered imperative to the former to administer British law, and to the latter, in all matters of inheritance and general property, parental and other domestic rights, Hindu and Muhammadan law, in its original unmodified form. The question then naturally arises, why any such limitation as to persons at all? Or why, within the limited circle of persons affected, such distribution of them into classes, as to restrict the privileges of British law to British-born subjects? Why not rather embrace the numberless petty epicycles of national or provincial individualities, in the one grand all-comprehending cycle of catholic humanity, and subject the whole simultaneously to the beneficial operation of the spirit of British law and British justice?

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To these questions we may briefly reply, in the language of one of the most competent of judges, Mr. Harington. "The fixed habits," says he, "manners, and prejudices, and the long-established customs of the people of India, formed under the spirit and administration of an arbitary government, totally opposite in principle and practice to that of England, would not admit of a more general application of British laws to the inhabitants of this country, who not only are ignorant of the language in which these laws are written, but could not possibly acquire a knowledge of our complex, though excellent, system of municipal law, composed in part of general and local English customs, partly of the civil and canon laws, adopted in particular jurisdictions, and partly of the voluminous statutes enacted by the King's Majesty, with the advice and consent of Parliament, during a period of more than 500 years." Again, "it is impracticable to extend to India, held as a foreign dependency, the laws and constitution of Great Britain; nor would such laws and constitution, the inestimable privilege and dearest right of men who have the happiness to be born and educated under them, be suitable or acceptable, if they could be so extended, to a people whose religion, laws, customs, and manners have fixed such insuperable barriers to all assimilation." In the same strain Mr. Verelst writes of the impossibility of introducing English laws, as the general standard of judicial decision in these provinces, without violating the fundamental principle of all civil law, that they ought to be "suitable to the genius of the people, and to all the circumstances in which they may be placed." Sir John Shore, afterwards Lord Teignmouth, gives it also as his deliberate suggestion, that "the grand object of our Government in this country should be to conciliate the minds of the natives, by allowing them the free enjoyment of all their prejudices, and by securing unto them their rights and property."

Actuated apparently by these and similar considerations, the British Legislature, "instead of extending the local and complicated laws of England to the remote and populous territories which had been gradually acquired by the East India Company, resolved to limit the administration of English law over persons who, from their distant situation and other circumstances, could not be admitted to the whole of the rights and privileges of British subjects." Were the millions of natives, then, beyond the narrow bounds of Calcutta to be abandoned to a chaotic state of lawless confusion? No; for them, too, the British Legislature made provision. Unable itself, from local inexperience, to pass suitable laws, it declared it to be lawful (13 Geo. 3, c. 63, s. 36, 37) "for the Governor-general and Council of the united Company's settlement, at Fort William, in Bengal, from time to time, to make and issue such rules, ordinances, and regulations for the good order and the civil government of the said United Company's settlement at Fort William aforesaid, and other factories and places subordinate or to be subordinate thereto, as shall be deemed just and reasonable, such rules, ordinances, and regulations not being repugnant to the laws of the realm." It was further enacted (21 Geo. 3, c. 70, s. 23) that "the Governor-general and Council shall have power and authority from time to time to frame regulations for the provincial courts and councils, and shall, within six months after the making of the said regulations, transmit or cause to be transmitted copies of the said regulations to the court of directors and to one of his Majesty's principal Secretaries of State, which regulations his Majesty in Council may disallow or amend; and the said regulations, if not disallowed within two years, shall be of force and authority to direct the said provincial courts, according to the tenor of the said amendments."

From this date many important regulations began to be framed by the Governor-general in Council, some of which greatly modified and others wholly superseded certain native laws and usages of a capricious, arbitrary, or ferocious character. Of these, several were printed, with translations in the country languages; others, however, "still remained in manuscript, and those printed were for the most part on detached papers, without any prescribed form or order, and consequently not easily referred to, even by the officers of government, much less by the people at large, who had no means of procuring them in a collective state, or of becoming acquainted with such of them as had not been promulgated in the current languages."

Such a state of things obviously demanded a remedy. Happily for India, in the hour and crisis of her legislative exigency, there was at the helm of affairs a statesman characterized not less by promptitude and energy than by sagacity and benevolence. In 1793 the Marquis Cornwallis passed his celebrated Ordinance, entitled, "A Regulation for forming into a regular Code all Regulations that may be enacted for the internal Government of the British Territories in Bengal." By that Ordinance it was also established and declared that all the regulations should not only be formed into a regular code, but printed, with translations in the country languages; that the grounds of every regulation be prefixed to it; that the courts of justice within the provinces be bound to regulate their decisions by the rules and ordinances which such regulations may contain; that thereby the native inhabitants may be made acquainted with the privileges and immunities granted to them by the British Government.

This momentous Regulation was subsequently, in 1797, ratified by Act of Parliament. It thus became incorporated with the laws of the British empire; and "supported," says Mr. Harington, "on this firm basis, it may be deemed the corner of the system of regulation and polity for the internal government of these provinces. It may also be justly considered to have established a constitution for the native inhabitants of this dependant subordinate kingdom the most beneficial for them, and for the sovereign state, which the situation and circumstances of both will admit."

The spirit of all these codes of Regulations and Acts of Parliament was to preserve to the natives, as far as equity and reason could allow, their respective laws in suits regarding succession,

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succession, inheritance, domestic rights, caste, and all religious usages and institutions; with the provision, however, made for such further laws and regulations as circumstances and experience might from time to time show to be required. Hence, in the progress of time, has arisen a system compounded of old and new laws, and modifications of former laws and usages, designed to perpetuate, "as much as possibly can be done, their institutions and laws to the people of Hindustan, and attemper them with the mild spirit of the British Government."

From the whole of the preceding statements, it follows that hitherto three great and distinct systems of law have been cotemporaneously administered by British functionaries in India. To British-born subjects, whether resident in Calcutta or scattered throughout the provinces, the Supreme Court is bound to deal out British law. To the native inhabitants of Calcutta, whether Hindu or Muhammadan, the same court is ordained to administer their respective laws without any reference to the amendments of the local government. To the millions of natives in the interior the provincial judges and magistrates are equally restricted by Parliamentary statute to administer Hindu and Muhammadan law as altered, modified, and improved by successive Regulations of the Governor-general in Council. Hence much of the inextricable confusion, embarrassment, and uncertainty wherewith the administration of justice in India has hitherto been beset. Hence, also, the extreme desirableness, if practicable, of framing one universal code of law which could extend the uniform principles of an equitable and enlightened system of jurisprudence alike to all classes of British subjects in this widely-extended empire. At all events, it seems the demand of reason and common sense that the present monstrous anomalies should be instantly swept away. Why should British judges be at one time cushioned on the congenial couch of reason and high intelligence, propounding the noble principles of equitable and civilized law, and at another stretched on the rack of torture, when compelled to lend the venerable sanction of senatorial authority to the prescripts of a barbarous and despotic code? Why should the influential metropolitan class of natives be doomed to groan under a yoke that has been forged in remote ages of savage ignorance, while their more highly-favoured brethren in the provinces have to bear the original yoke greatly relaxed by the mildly attempering spirit of the British constitution? Why should any class of natives, whether metropolitan or provincial, be destined for ever to smart from the operation of laws and usages which, defeating the ends of substantial justice, can often be regarded only as lures to outrage, bribes to perjury, and bounties on unrighteousness? Keenly alive to the existence of such rampant evils, such raging inconsistencies, the British Legislature has at length resolved, at whatever cost, to attempt a remedy. For several years past a commission of learned and honourable men has been vigorously prosecuting the Herculean task of reducing the present chaos of lawless elements into something like order and stable form. Now, then, if ever, is the time to sue for the legal redress of wrongs, the legal rectification of evils. Encouraged, accordingly, by the well-known readiness of the Governor-general in Council and the Law Commissioners to receive any candid and reasonable representation, from whatever quarter, we now proceed to point out a few cases for the adjustment of which their beneficent interposition is earnestly solicited.

II.—*The Legal Rights of Hindu and Muhammadan Parents over Children under Age.*

There are some rights which, in the language of jurists, have been termed both natural and absolute; natural, because they arise spontaneously from the very nature and constitutions of things as ordained by an all-wise Creator; absolute, because they exist in absolute force and efficacy, independent of the recognition of mere human laws at all. Of this description is the right which every man has to the enjoyment of his own life, and limbs, and personal liberty. Such rights it is not the province of human law to create; being inherent in man as the gifts of the Creator from the hour of birth, they are antecedent to the exercise of any human legislation. Of these, therefore, all human laws ought only to be declaratory, regulative, preservative, and enforcive. In the words of the great Grecian orator, "the design and object of law is to ascertain what is just, honourable, and expedient, and when that is discovered, to proclaim it as a general ordinance, equal and impartial to all;" for though human law is only the interpreter, definer, and publisher of such rights and obligations as are natural and absolute, it is its supreme function to see that these are exercised within the limits prescribed by the constitution of nature, and never beyond the allotted boundaries, or for the furtherance of ends and designs contrary to those for which they were originally bestowed, in free grant, as privileges and prerogatives, by the great Creator.

In regard to parents, it is held by universal consent that it is their imperative duty to maintain and protect their own children; to supply them during their minority or continued helplessness with necessary sustenance, and to defend them from the infliction of unprovoked injuries; a duty paramount to mere human law, imposed as it is upon them by the immutable ordinance of nature itself. From the absoluteness of this natural duty alone, the possession of a natural right to the general guardianship of their children would follow as an inevitable consequence, and the possession of the requisite power and authority for the maintenance of that right as another consequence alike inevitable; and if the power of parents be confessedly a natural right, the yielding of submission and obedience on the part of children in all things reasonable and just must be as clearly a natural duty.

It must, however, never be forgotten that all the rights and duties of human beings, however deep their foundation in the nature and constitution of things, are necessarily confined within certain prescribed bounds and limits. The rights are conferred and the duties

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duties imposed for definite beneficial ends. To exercise the one or perform the other, for the attainment of such ends, is proper, just, and good: to exercise the one or perform the other, for the promotion of ends different from those for which they were designed, is improper, unrighteous, and evil. Such unintended modes of enforcing rights or discharging duties may, and often must, lead to a forfeiture of the former and an exemption from the obligations of the latter. There is, for example, no right more eminently entitled to the denomination of "natural and absolute," than the right to one's own life and limbs and liberty. Neither is there any duty more eminently entitled to the denomination of "natural and absolute," than that of non-interference with the uninterrupted enjoyment of such right. But suppose such right were employed in violating a Divine law, like that which enjoins the worship of the one living and true God, as His inalienable and eternal due, such employment of it were to traverse and counteract some of the ends for which it was bestowed. Of such perverse application of the right, human laws may or may not take cognizance; but assuredly it will not escape the coming retributions of Divine justice. Again, suppose such right were exercised in attempting to inflict injury on the life, limbs, or liberty of another fellow-creature; such exercise of it, too, would be an unwarranted contravention of the purposes for which it was designed. Here, human law has always interposed, not merely as the guardian but the regulator of the proper use of rights; and in cases of such heinous misapplication of them, has generally decreed a forfeiture of the personal liberty abused, or even of life itself, which has been employed, not for one's own benefit, but for the injury or destruction of others.

Granting, then, that the right of parents to the guardianship of their children during their minority, is an indefeasible natural right, it is clear beyond all debate, that, like every other natural and absolute right, it must have it bounds and limits. To define these bounds and limits—to point out the general modes in which the right is to be exercised—to specialize the restrictions to which, for the sake of the general interests of society, it must be subjected—this, this is the grand province of wise and equitable human law. Accordingly, in all civilized countries, the supreme legislature has ever felt it to be a sacred duty to extend the benefit of its salutary interposition. The legal limitations or extensions of the natural right have varied in different states, according to the varied views of expediency current at the time, or the varied municipal immunities enjoyed in other matters by the citizens. The laws of some of the ancient states left parents the power of life and death over their children. But such Draconic severity has always been softened in proportion as the states progressed in genuine civilization. The laws of England, in particular, while upholding inviolate the general right of parents, have subjected it to many reasonable and righteous restrictions. In order to enforce obedience, the parent may legally correct his child, in a moderate degree; but he is prohibited from carrying chastisement to the extent of cruelty, or to any extent which might remotely endanger health, limbs, or life.

Yea more, proceeding on the well-grounded assumption, that the right has been conferred on parents for the real welfare of their children, the law of England has legislated, not only for the body which perisheth, but for the immortal soul. There is no special exclusive statute acknowledging in parents a right to force what moral and religious sentiments they please on the minds of their children. In a general way, it may be said that the law is neutral, neither formally recognising a supposed natural right nor conferring an artificial legal one. If, at any time, the law has interfered at all, it has uniformly been, not to force the child to submit to the tyranny and caprice of the parent, but to compel the parent to abstain from coercing the conscience of the child in matters of faith and morals. A limitation has often been put to the general power and control which the father is permitted to exercise over the minds and education of his children. Judge Blackstone declares that such limitation is based on the express ground, that "nothing is so apt to stifle the calls of nature as religious bigotry." Hence, as the learned judge proceeds to show, hence the well-known fact in the constitutional history of England, that two statutes were passed by the Legislature at different times, to protect the children of Jews and Papists from the bigotry of their respective parents, upon their renouncing the Catholic or Jewish faith in order to embrace the truths of the Protestant system. The first of these was the statute of 11th and 12th Wm. 3, c. 4, which declares its object to be, that the Protestant children of Popish parents "may not, for want of fitting maintenance, be necessitated in compliance with their parents to embrace the Popish religion, contrary to their own inclinations." The other Statute is the 1st Anne, c. 30, which professes a similar object; viz. "That if Jewish parents refuse to allow their children, on their becoming Protestants, a fitting maintenance suitable to the fortune of the parent, the Lord Chancellor on complaint may make such order therein as he shall see fit." And still more recently, as appears from the 10th volume of Vesey's Reports, the Lord Chancellor Eldon, no mean authority on the subject, said, in the case there reported of De Manneville *v.* De Manneville, that, "with reference to religion, this court, (viz. the Court of Chancery) had interfered to prevent parents from preaching irreligious doctrines in the presence of their families." There is also the late celebrated case, in which Mr. Wellesley was deprived of the custody and guardianship of his own children altogether, upon the express ground of his immorality, and the danger which existed that his fatherly authority might be exerted to vitiate and demoralize the minds of his children. That a power, therefore, does really exist under the sanction of the British Legislature to control and put effectual restrictions on the general rights of parents, with the view of promoting the moral and religious well-being of the child, cannot possibly be called in question. With respect, in particular, to the two aforesaid Acts of Parliament, it is worthy of special remark, that the British Legislature seriously did think that a child,

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i. e., a person under legal age, might have an inclination of its own, wholly independent of its parents, towards one religion, in preference to another, though that might be his ancestral faith, and that this inclination should, on no account, be forcibly interfered with by the bigoted parents.

Having premised this much on the general rights of parents, and the spirit and enactments of the British Legislature relative thereto, we come now briefly to consider the rights of Hindu and Muhammadan parents, in reference to one or two particulars with which those who are interested in the improvement of the natives are most deeply concerned.

In order to ascertain the existing state of the law on the subject, the following queries were submitted to highly competent professional men; and the following answers were, in substance, received:

1. At what age does the authority of parents over their child, in this land, entirely cease? —*Ans.* At 16 years of age.

2. Under the age of 16 years, or during the legal nonage of children, have parents the power to beat, confine, and punish to any extent without control?—No; not to any extent and without control, either by mufassal or Supreme Court law.

3. If a child is believed, on sufficient grounds, to be suffering under ill-treatment from its parent or guardian, is there any mode at law by which the matter may be investigated and a remedy applied; and if so, what remedy?—If actual cruelty be proved, the parent may be summoned and punished by the mufassal magistrate, and security taken for his future conduct.

4. If the child run away and take refuge with a friend, either to escape ill-treatment or for the sake of religion, has the parent a right to reclaim, and by what means will the law enforce his right?—By Regulation VII. of 1819, children in such circumstances, would, by the mufassal courts, be restored to the parents. The same would be done by the Supreme Court.

To a certain extent these answers are highly satisfactory. It is satisfactory to be assured by all the authorities consulted, that the legal age in this country, or that at which the controlling authority of the father ceases, is 16 years. It is satisfactory, also, to be assured that, under that age, the power of the father is not unlimited. Still, there is much that is unsatisfactory, and not at all commensurate to the exigencies of the present transition state of Hindu society. It were an absurd affectation, a purblind policy, a criminal indifference, to overlook the present changed and constantly changing state of things around us. To do so were a defeating of some of the very ends for which a supreme legislative power exists. Not to embarrass ourselves with minor points, is it not notorious that, in this land, government colleges and schools, as also seminaries supported by public or private societies, have been established for the diffusion of European literature and science, with or without religion? Is it not alike notorious, that the natural effect of such dissemination of knowledge is to relax the sentiments of native youth in reference to their ancestral creeds? These youths may or may not embrace some new and definite form of faith. They may remain in a negative state of Deism or even Atheism. But, in any or all of the new states of mind into which a large and liberal course of instruction may conduct them, is it not notorious that they are apt to despise, and often wholly to repudiate the faith of their fathers?

Those who proceed on the high and holy principle of obeying God rather than man in communicating all needful knowledge, whether human or divine, to all, according to the free and unconstrained opportunities presented by providence, require no supplementary argument to fortify them in the prosecution of their noble task. But, for the sake of those who are actuated mainly by views of worldly expediency and dry legalism, it is most important to insist upon it, that, according to the letter, spirit, and express statutes of British law, Government and all others are legally entitled to communicate, without forcible coercion, to old and young alike, whatever sound instruction they please; be the result what it may, as to a false, superstitious, and idolatrous faith. From the statutes already quoted, it is clear beyond all doubt that the law of England permits a child to exercise the mental powers which God hath bestowed upon it, in forming its own judgment on the subject of its eternal interests, to renounce freely what it discovers to be false, and as freely and fearlessly to embrace what it has been led to consider the only true religion; yea, and coerces the parent, even after such renunciation, to continue the necessary support which by the immutable ordinance of nature he is bound to bestow. Of course it follows, and it is important to note the legitimate inference, that the law of England distinctly recognises the general principle, that it is not unlawful to communicate religious instruction to the mind of a child, even though that instruction should be wholly opposed to the religious system in which the parents conscientiously believe, and even if the consequence of such instruction should be non-compliance, in matters of religion, with the wishes and commands of earthly parents.

The same conclusion may be formed negatively thus: Had the Legislature for a moment conceived that it was a violation of previously existing legal rights, *i. e.* a crime in the eye of law, to instruct a child in a religious system different from that in which the parents conscientiously believed, what ought to have been its regular procedure? Would it not have been necessary, on passing the above-mentioned statutes, to repeal the pre-existing law, to withdraw the pre-existing rights? Most undoubtedly. And its passing the said statutes without any reference to pre-existing laws and rights, proves incontrovertibly the non-existence of both. Again, had the Legislature supposed that it was a crime to teach a child a religion different from that of its parents, what ought we to expect its procedure to have been, especially towards Papists? At a time when the utmost anxiety was manifested

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manifested by it to swell the ranks of the Protestant party, and to diminish those of the Popish; at a time, too, when Acts were crowded upon Acts to regulate and control the natural rights of all who adhered to the Popish interests; at such a time, might we not have reasonably expected that a special statute should be enacted, investing Protestant teachers with an express legal authority to instruct the children of Papists? The non-bestowment of such authority proves incontestably that the Legislature did not think it requisite, *i. e.* did not once entertain the idea that there were any legal rights that could be violated, by efforts to instruct children in a religious system different from that of their parents. And it cannot for a moment be supposed that those who prospectively provided for "the maintenance of the children who should become Protestant," would have forgotten to protect, if protection had been necessary, the human agents through whose instrumentality the change of religion might be effected. But no legal enactment was thought necessary for this purpose. In a civilized and Christian country, a doctrine so inimical to our laws and our religion as this, viz. that we are not to inculcate in the minds of children, who without any improper influence come within our reach, pure notions of moral and religious obligation, because their parents may happen to be blinded by ignorance and superstition, could not, with any pretension to consistency, have been entertained. Nor is it possible that any question can arise as to the meaning of the expression "children," used in the preamble and body of the statutes now so often referred to. In the enacting part of the first of them it is ordered "that the maintenance shall be suitable to the degree and ability of such parent, and to the age and education of such child;" clearly showing that the term "child" was used as descriptive of the age of the son or daughter of the parent, and not merely as descriptive of his own issue. The maintenance also was intended to provide for "the education of the child," which would have been an unnecessary provision in the case of an adult.

Once more, it ought ever to be borne in remembrance that though, in reference to perfect freedom and independence as well as full investiture with rights and privileges, the law of England treats every individual as in a state of childhood or pupilarity, and therefore not wholly exempt from parental control till the age of 21, or till the period of legal minority has merged into that of legal majority, it yet does, in particular points, confer a certain amount of liberty and the exercise of certain important rights. The legal age, or that of the child's perfect deliverance from the empire and tutelage of the father, and perfect enfranchisement in all civil privileges, being wholly arbitrary, varies in different countries. In Naples, it is 18; in Holland, 25: in France, formerly 30. But in all civilized countries, infants or persons in a state of nonage have always been held entitled to enjoy at successive periods certain legal privileges, while they still continue to labour under various legal disabilities. "In England," says Judge Blackstone, "the ages of male and female are different for different purposes. A male, at 12 years old, may take the oath of allegiance; at 14, is at years of discretion, and therefore may consent or disagree to marriage; may choose his guardian; and if his discretion be actually proved, may make his testament of his personal estate; at 17, may be an executor; and at 21, is at his own disposal, and may alien his lands, goods, and chattels. A female, also, at seven years of age, may be betrothed; at nine, is entitled to dower; at 12, is at years of maturity, and therefore may consent or disagree to marriage, and if proved to have sufficient discretion, may bequeath her personal estate; at 14, is at years of legal discretion, and may choose a guardian; at 17, may be an executrix; and at 21, may dispose of herself and lands." According to the same high authority, persons in a state of nonage, on account of their being capable of exercising both reason and conscience, are held liable to various penalties or legal liabilities. In criminal cases, for example, "an infant of the age of 14 years may be capitally punished for any capital offence; but under the age of seven he cannot. The period between seven and 14 is subject to much uncertainty; for the infant shall, generally speaking, be judged *primâ facie* innocent: yet, if he was *doli capax*, and could discern between good and evil at the time of the offence committed, he may be convicted and undergo judgment and execution of death, though he hath not attained to years of puberty or discretion. And Sir Matthew Hale gives us two instances, one of a girl of 13, who was burned for killing her mistress; another, of a boy still younger, that had killed his companion and hid himself, who was hanged; for it appeared by his hiding, that he knew he had done wrong, and could discern between good and evil, and, in such cases, the maxim of the law is, *malitia supplet ætatem*. So also, in much more modern times, a boy of 10 years old, who was guilty of a heinous murder, was held a proper subject for capital punishment, by the opinion of all the judges."

Now, can it be that the law of England which pronounces an infant at 14 to be "at years of discretion," and accordingly capable of consenting and disagreeing to marriage, choosing a guardian, or making a testament of personal property: can it be that the law which enfranchises such an infant, on the express ground of its having "sufficient discretion," in the right of entering into some of the most important steps in life, and consenting or disagreeing to the most momentous contract connected with social well-being: can it be that the same law holds such infant, though arrived "at years of discretion," wholly incompetent to take other analogous steps in reference to its spiritual guardianship, its eternal inheritance, and alliance or union with the heavenly Bridegroom, the Redeemer, the Divine Head of the church, all, all of which exercise so paramount an influence on its real happiness in time, its real welfare in eternity? Can it be that the law of England, which declares a male at 12 years old to be capacitated, and, therefore, entitled to take the oath of allegiance to an earthly king, will not hold such infant to be endowed with

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sufficient discretion to be allowed to determine whether he shall yield obedience to that, which, by Divine authority, has been pronounced to be "nothing" in the world, or be faithful and bear true allegiance to Him, who is King of kings and Lord of lords, and who hath proclaimed, that out of the mouths of babes and sucklings He can and will perfect praise? Can it be that the law of England which holds an infant, considerably under 12 or even 10 years, to be so capable of "discerning between good and evil," as to be held responsible for its conduct, to the extent of preserving or of wholly forfeiting its right to natural life; to the extent in criminal cases, of being liable to be convicted, and undergo judgment and execution of death: can it be that the same law will hold such infant to be utterly incapable of "discerning between good and evil," in reference to the interests of the soul and its spiritual life; and, therefore, not legally entitled to judge for itself in discriminating between the good and evil ways which lead to endless perdition or endless bliss? No, no. The law of England, with all its faults, can never be chargeable with inconsistencies and contradictions so outrageous as these. Accordingly, have we not found it, by the most explicit statutes, announcing the competence of even "children" to decide for themselves in matters of religion, expressly providing for their maintenance and protection, in the event of their choosing a faith different from that of their parents, and thus extending the invulnerable egis of British law alike over the freedom of teachers and of taught?

Now, what we desiderate is, that the spirit and letter of British law, in their absolute integrity, be faithfully and consistently applied to the existing state of things in India. By the old statute law of England, the Indian government, public societies, or private individuals are permitted and justified in conveying sound knowledge of every description to the minds of such youth as come within their reach, however alien such knowledge may be to the creed of the parents. Yea more, by an express Act of the British Parliament, in 1813, it is enacted, that "whereas it is the duty of this country to promote the interests and happiness of the native inhabitants of the British dominions in India, such measures ought to be adopted as may tend to the introduction among them of useful knowledge and of religious and moral improvement: and, in furtherance of the above objects, sufficient facilities ought to be afforded by law to persons desirous of going to and remaining in India, for the purpose of accomplishing those benevolent designs, &c." From the fact, that, in this clause, "religious and moral improvement" is as expressly contemplated and provided for as "the introduction of useful knowledge," it is clear, that our British legislators were prepared to anticipate any possible changes which might arise from the peaceable inculcation of true "religion and morals;" and to regard these changes as the "accomplishment of benevolent designs."

Thus doubly guarded and fenced by the old statute law of England, as well as modern specific Acts of Parliament, the friends of native improvement may proceed fearlessly with the free communication of all truth, whether literary, scientific, or theological. Now, is it not self-evident that the cordial reception of such truth is wholly incompatible with the perpetuation of hereditary error? Does the government, then, or any public society, or private individual, really wish the sound knowledge imparted to be honestly embraced? If so, ought they not to be prepared for the change of sentiment which must inevitably ensue? Ought they not to provide for it? If not, there must either be generated a habit of systematic hypocrisy, in continuing the profession of that which the light of the true knowledge conveyed must expose in all its deformity, or cruel wrong be sustained at the hand of parents; for, is it not notorious that there is nothing more calculated to unhumanize, yea, to exasperate and exulcerate into something like venomous fury, a race so ignorant, bigoted, and prejudiced as the natives of this land, than the growing indifference, contempt, or threatened renunciation of ancestral faith on the part of their children? Now, since, according to the spirit and maxim of British law, "nothing is so apt to stifle the calls of nature as religious bigotry," and since, in consequence of this indisputable fact, that law has specially provided for the safety and protection of "children," who may be led to disavow or relinquish the creed of their fathers, is not the Legislature bound by every obligation, human and divine, to throw the shield of its protection over those whom it has been instrumental, directly by its own efforts, or indirectly by its sanction of the efforts of others, in bringing into the enlightened predicament of despising or denying a false, superstitious, and idolatrous faith?

For such a purpose, in any adequate sense, the present state of the law is altogether insufficient. There must be proof of actual cruelty before the judge or magistrate can act; but, from the constitution of native society, this, in the great majority of cases, is wholly unattainable. From the secrecies and concealments so characteristic of the entire regime of native domestic economy, it is not possible, in ordinary circumstances, to obtain a shadow of positive evidence. The youth may be in confinement, removed from every eye save that of his persecutor; he may be manacled and beaten, or forcibly carried into a boat, and conveyed by the river to a distant city or province; he may have stupifying drugs, in the meanwhile, administered, which paralyze the mental as well as the bodily faculties, till a state of confirmed idiocy has been superinduced. Now, under a wise and paternal British Government, ought all this to be tolerated? Impossible. What, then, is to be done? As at least a partial and certainly a practicable remedy, we would recommend,

1st, That it be enacted, that in any case in which a child has absconded or disappeared from an educational seminary, whether belonging to government, to a society, or to a private individual, under circumstances leading to the reasonable belief that he is confined, beaten, or otherwise ill-treated by the parent, a power be invested in the judge or magistrate of the district,

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district, summarily to call upon such parent to bring his child into open court, there to be interrogated concerning the reality of such supposed ill-treatment.

2dly, That it be enacted, that in any case in which cruelty or ill-treatment on the part of the parent may be alleged by the child, and admitted upon reasonable evidence, especially when such ill-treatment is seen to result purely from "religious bigotry" on the one side, and an exercise of the sacred rights of conscience on the other, a power be invested in the judge or magistrate, similar to that exercised by the Lord Chancellor and Court of Chancery in England, of nominating and appointing, if he see fit, a proper guardian for the ill-treated or persecuted child.

3dly, That as many of the disputes and law suits between natives arise from ignorance of or dubiety relative to the age of one or other of the parties concerned, it be enacted that a public and official register of births be kept, somewhat after the manner of similar registers in Europe.

That these recommendations, if ever embodied into a law, could remove all the evils complained of, is what no one has a right to anticipate; but that they would tend greatly to mitigate these evils is what must be readily conceded by all who are competent to judge, from personal observation and experience, of the present very peculiar transition state of native society. Prevention is always better than remedy; and the very knowledge of the fact, that a parent was liable to be summoned to compear with his child at the bar of a public magistrate or judge, upon grounds of reasonable suspicion, or merely presumptive evidence of the ill-treatment of the latter, and more especially, that in the event of ill-treatment being satisfactorily proved he was liable to a deprivation of his right of guardianship altogether, the very knowledge of all this would inspire a wholesome dread of offending, and operate as a salutary preventive check to the perpetration of acts which must entail such penalties; it is, therefore, fondly to be hoped that the Law Commissioners now acting under appointment of the Imperial Legislature may be honoured, as instruments in the hands of Divine Providence, for ameliorating the existing state of the legal rights of parents, by attempering the whole with the mild spirit and genius of the British constitution. It is earnestly to be expected that they may render the reciprocal duties and obligations of the parental relationship commensurate with the peculiar exigencies which the policy or sanction of the British Government itself creates, exigencies inevitably attendant on the diffusion of true literature, science, and theology throughout the land. It is a consummation devoutly anticipated by all the wise and the good, that, by the relinquishment or mitigation of the legislative principles of a demi-barbarous age, as well as the successive removal of all external obstacles whatsoever, the march of native improvement may be free and unobstructed, and the blessed era greatly hastened, when the general evangelization of the people shall form the sure basis and guarantee of their highest, noblest, and most stable civilization.

III.—*The Hindu and Muhammadan Laws of Inheritance.*

This is a subject which has long and anxiously attracted the attention of the friends of Indian improvement. In the year 1830, while the agents of different societies were engaged in collecting the most minute and authentic information respecting it, the desirableness of obtaining the general co-operation of those who were most deeply concerned in the amelioration of the natives, in thoroughly investigating a matter in which all were alike interested, seemed to be felt and acknowledged by all; a general meeting was accordingly held; and, after the subject was freely and largely discussed, a committee was appointed, with instructions to render the investigation as complete and efficient as possible. The committee, having soon afterwards met, and taken into consideration various reports and opinions, nominated and appointed two of their number, the late Mr. Pearce and myself, as a sub-committee, to make any farther inquiries that might be necessary, and combine the result of the whole into one regular and continuous statement. When we had prepared our statement, it was presented to the committee, and met with their decided approbation. In order, however, to ensure all possible freedom from error, and enable them to forward the statement to Great Britain, in a form of incontestable accuracy, it was deemed advisable, by means of private circulation, to afford all who were well acquainted with the subject an opportunity of pointing out any mistakes in points of law, or any impropriety in the language. After a short experience, the inconvenience and loss of time incurred in circulating a large parcel of MS. were found to be such as to lead to the determination to print 50 copies, and thereby facilitate the rapidity and enlarge the extent of distribution.

Now, besides the very wide circulation which many of these obtained among friends and acquaintances, about 20 were forwarded to different gentlemen holding the highest official situations in His Majesty's service in Calcutta, and in the H. C.'s service throughout the Bengal presidency, accompanied respectively with the following note:

"Dear Sir, Calcutta, December 1830.

"Permit us, for a short time, to intrude on your very limited leisure, with a case in which justice and humanity, as well as religion, seem to implore your kind assistance.

"You are well aware of the nature of the Hindu and Muhammadan laws of inheritance, as administered in the Honourable Company's courts, and may probably have been led to reflect, ere now, on the unhappy state of destitution and misery to which it inevitably conducts all those who, from among the more respectable Hindus or Musalmáns, embrace Christianity. This subject (with one or two others connected with it) has for a long time engaged

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engaged the attention of the missionaries of various denominations resident in Calcutta; and, at a late meeting, we were requested by them to draw up a statement on the subject, which might with propriety be used by our friends in England as the basis of an effort for attempting an amelioration of the laws in question.

"To meet the views of our associates we prepared the accompanying paper; but as we feel very desirous, ere we submit it finally for their adoption, that the statements it contains, and the language used in reference to them, should be rigidly examined by a few gentlemen familiar with the subject, permit us to request your kind perusal of and remarks on the paper.

"We are anxious that the statements of law should be perfectly accurate, having no desire to present an imaginary grievance, or to represent a real one in darker colours than it deserves; and we are also anxious that the comments on the evils of the law should be free from disrespect to the government, and not load it with undeserved reproach. Should you conceive, therefore, that any part of the law is misstated, or its evils so stated as may probably be offensive to the government here, or unjust to them if published at home, we shall feel truly obliged to you for pointing out the error, and thankfully avail ourselves of your suggestion, making no use of your name without your express sanction.

"If your leisure will allow it, we shall feel particularly obliged by the return of the paper, with your remarks, in the course of 10 days at the farthest.

"We remain, &c.
(signed) "*Alexander Duff.*
"*W. H. Pearce.*"

To the printed statement was also prefixed the following explanatory "advertisement:"

"In introducing the present subject to the notice of those connected with the administration of law in this country, we have no desire to suppress, nor, when acknowledged, to despise the fact, that it appears to be intimately connected with many others, involving similar principles, and requiring a similar adjustment. The reason of our studied silence in regard to the latter, arises simply from the circumstance, that, however interesting to the parties concerned, and however necessary for the statesman to include in a general measure of legislative justice, with these we, as Christian ministers, conceive we have nothing to do. And the sole reason of attempting to excite attention to the former is, that with it, we, as Christian ministers, are compelled to have much to do. From principle, we utterly disclaim the propriety, on our part, of any officious intermeddling with politics, in the ordinary sense of that term. And if, from the title prefixed to the following statement, any be inclined to think that the consistency of our profession is compromised, we only request a suspension of judgment till the whole has been carefully perused. Then may the whole, instead of being contradictory to profession, be found to furnish one continued exemplification of a steady adherence to our avowed principles; when it shall appear, that we have studiously avoided all reference to those subjects, with which, however closely connected with the present in the view of the politician, we, in the exercise of our ministerial duties, have no concern: and that we have only attempted to give exclusive prominence to that particular branch of a large and complicated system, which necessarily concerns us in our missionary capacity and usefulness, which closely concerns the large and influential Christian societies whose wishes we endeavour to promote, and which supremely concerns that vast portion of our fellow-subjects, for whose improvement, intellectual, moral, and religious, we desire unceasingly to labour.

"With the view also of preventing any misconstruction that might arise on the part of the reader as to the real bearing and import of much of the language that follows, it is proper to state, once for all, that when the evil nature and consequences of the law are attempted to be exposed, it is not intended to be implied, that the law was primarily enacted by the British Government, or sanctioned in the full knowledge of its evil tendencies; far less for the sake of producing the evils specified; or even sanctioned at all, without the pressure of some dire necessity. It is one thing to originate, and another to administer, a law already in existence: one thing to enforce a law in the full knowledge, and another to enforce it in comparative ignorance, of the extent of its evil nature and injurious effects: one thing, voluntarily to choose, and quite another, reluctantly to tolerate, a law imposed by some imperious necessity. We can readily allow, that the latter branch of these alternatives may, with some degree of accuracy, describe the actual condition of Government, as far as respects the law in question. But this does not disprove the propriety of the present exposure, nor of the language employed. Since a law, evil in its nature, and pernicious in its effects, is found really to exist; and since it appears to be adopted, sanctioned and enforced by Government, or the official agents of Government, it is not improper to direct attention towards it; and it is not possible to make mention of it in any other light, than as an act, or at least, sanctioned enactment, of Government.

"We trust, however, that as, with the blessing of Providence, our Eastern empire is now firmly consolidated; as no immediate danger is to be apprehended, either from internal dissension or external aggression; and as the present administration, both in India and the mother country, is characterized by no ordinary degree of liberality, and no ordinary desire to secure the just rights, privileges, and prosperity of all classes of that vast community that compose the British empire, we sincerely trust, that a faithful, uncompromising statement on the present subject, presented in due form to the proper authorities, will be quite sufficient to ensure its speedy and equitable adjustment."

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Several of the gentlemen addressed on this occasion, and resident in Calcutta, honoured the sub-committee with a personal interview. From others, both in Calcutta and the provinces, written answers were received. And, while different opinions were expressed respecting the time and the mode of remedying the evil, it was satisfactory to find, that, with the exception of a few slight inadvertencies in the language, which were immediately corrected, the general accuracy of the statement was universally and unequivocally admitted.

The statement, thus prepared and presented in a form which, from the searching scrutiny to which it was subjected, might fairly challenge freedom from objection on the ground of inaccuracy, was as follows:

"There appear several subjects more particularly demanding the attention of the friends of Christianity in India, in order, at this time, to secure some legislative provision regarding them. One of these is, the injurious effects of the Hindoo and Muhammadan laws of inheritance, on persons who may renounce those religions; and the second, the anomalous legal situation of both Musalmáns and Hindus, after they have embraced Christianity.

"In reference to this subject, we beg to remark, that a Hindu or Musalmán, on changing his religion, is, by the existing law, disqualified for holding or inheriting property. To proceed to particulars, we observe, in the first place, that by the Hindu law of inheritance, as administered by the British Government in Bengal, a Hindu, on becoming a Christian or Musalmán, is considered as having lost caste; and hence he and his heirs, being Christians or Muhammadans, are declared to have forfeited all right to the ancestral* property he possessed, or had a claim to, at the time he changed his religion.

"That this is the law of inheritance as stated by the highest Hindu authority, is evident from the following extract from Manu: 'Eunuchs, and outcastes, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share of the heritage.'—Sir W. Jones' Translation of the Institutes of Manu, chap. ix. sec. 201.

"That this law, as it regards persons who have lost caste by renouncing Hinduism, would yet be enforced, seems equally evident. Mr. Colebrooke, whose extensive acquaintance with Hindu law is universally acknowledged, says: 'I do not think any of our courts would go into proof of one of the brethren (of a family) being addicted to vice or profusion, or of being guilty of neglect of obsequies and duty towards ancestors. But expulsion from caste, leprosy, and similar diseases, natural deformity from birth, neutral sex, unlawful births, resulting from an uncanonical marriage, would doubtlessly now exclude; and I apprehend it would be to be so adjusted in our Adálats.'

"Mr. W. H. Macnaghten, whose comprehensive knowledge of both Hindu and Muhammadan law is generally admitted, seems to be of the same opinion. In his Principles and Precedents of Hindu Law, a work lately published at the expense of the Bengal government for the use of their courts, in the chapter on 'Exclusion from Inheritance," (vol. ii. p. 131.,) this gentleman, who appears not to have inserted any opinions which he deemed erroneous, mentions a case quite in point, which came for decision before the Patna Court of Appeal. In this case the following question being proposed to the native law officer: 'A person of the Hindu persuasion having become a convert to the Muhammadan faith, on whom will the property which descended to him from his forefathers, and that which he himself acquired, devolve?' the pandit delivered it as his opinion, and the opinion seems to have been admitted as correct by the court, that 'whatever property the individual, previously to his conversion, was possessed and seised of, will devolve on his nearest of kin who professes the Hindu religion.'

"Several gentlemen, too, holding important judicial situations in the Honourable Company's service in Bengal, whom we have privately consulted on the question, as to whether conversion to Christianity would exclude a Hindu from inheritance, have been compelled, after reference to the best authorities on the subject, to declare it as their opinion, that were the Hindu law to be as usual regarded, such must be the consequence, the conversion necessarily creating incompetency to perform the funeral obsequies, the performance of which is the foundation of all claim to inheritance.

"This being the general interpretation of the law in Bengal, persons becoming Christians have never, to our knowledge, thought it worth while to apply to the courts of law with the view of recovering the property they formerly enjoyed. Being aware that a legal decision would be against them, they have submitted to the total loss of their property on embracing the Christian faith, in preference to incurring the great expense of attempting to regain it in a court of justice, with no hope of redress. The following, among other recent instances, we are acquainted with.

"Thákur Das, a Kayastha, the nephew of Guru Prusád Bábu, on becoming a Christian, was entitled to 5,000 rupees, ancestorial property, which was all relinquished.

"Jagamohan, a Rarhi bráhman, was of a most respectable family. His relations were zamindars, and lived near Barrackpoor. The ancestorial and acquired property which he would have enjoyed before his death, but of which he suffered the loss, through becoming a Christian,

* We have designedly not included acquired property; because there is such a collision of authorities, as to render it uncertain whether a convert from Hinduism to Christianity must forfeit property that is self-acquired; and, however undesirable that doubt should exist on such a subject, it is unnecessary to clog a clear and strong case, by associating it with one more or less involved in doubt; and because a remedy for the great and generally acknowledged evil would necessarily rectify that which is intimately connected with it, and, in some measure, dependant upon it.

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a Christian, is estimated by several Hindus, well acquainted with him and his circumstances, to have been at least rupees 20,000.

"A man of the name of Narapot Singh, of the Brahmanical caste, is the son of the late Púran Singh, who was a wealthy zamindar, near Gayah, in the province of Behar. On his demise, his property (which consisted of six mouzas, realizing an annual rent of about 16,000 rupees) descended in the following manner; viz. three mouzas, producing 8,000 rupees a year, to Narapot Singh; and the other three mouzas, producing a like sum, to the children of his brother. Soon after this event Narapot Singh came to Calcutta, and there embraced Christianity. This intelligence was no sooner communicated to his cousins, the other party included in his late father's will, than they seized upon his property, and have retained possession of it ever since, now upwards of 20 years. Rev. Mr. Ward, one of the Serampore missionaries, advised with several magistrates on the subject, particularly with the judge of the court at Gayah; but being informed, that according to the Hindu law, as administered in the provincial courts, he (Narapot Singh) had forfeited all claim to his property, he advised him to submit to the loss rather than engage in a law suit, which must, according to the present Regulations, be decided against him. He has, therefore, now (1830) suffered the loss of his property for the last 20 years, the amount of which, after deducting government taxes, &c. exceeds 100,000 rupees, which he has forfeited merely for becoming a convert to Christianity. At present, Narapot Singh is engaged as a native preacher in Calcutta, under the patronage of the London Missionary Society. Should it be considered necessary, the most indubitable evidence can be obtained to substantiate the above facts.

"Besides these, Káshi Mitre, deceased; Káshi Náth, a Brahman, and now employed at the Baptist Mission Press and many others, who lost considerable property, from 1,000 to 3,000 rupees each, might be mentioned as instances in which the injurious consequences of the law have been suffered by Hindus becoming Christians.

"That the same law is considered in force in the presidency of Madras, as well as Bengal, we judge from Sir Thomas Strange, who in his Elements of Hindu Law, chap. 9, thus refers to the law of inheritance, as there administered: 'It remains to consider one case, that may be said to be, with reference to personal delinquency, *instar omnium*, occurring in every enumeration on the subject, as a cause of exclusion, viz. degradation, or the case of the out-caste. Accompanied with certain ceremonies, its effect is, to exclude him from all social intercourse; to suspend in him every civil function; to disqualify him for all the offices, and all the charities of life. He is to be deserted by his connexions, who are, from the moment of the sentence attaching upon him, to "desist from speaking to him, from sitting in his company, from delivering to him any inherited or other property, and every civil or usual attention!" so that a man, under these circumstances, might as well be dead.'

"Though the same law exists in the Bombay presidency, it appears to have almost entirely fallen into desuetude there. According to the summary of Hindu law and custom, made by the late Mr. Steel, under the authority of the government of Bombay, it seems however there are yet some enactments recognised, which open the way to most serious oppression. He says: 'A man entirely losing caste, by changing his religion, from motives of avarice, has no right to share in the partition of family property, unless he did so in return for a grant to the whole family of a wuttan, &c. when he would be allowed a share. If the change of religion were operated by force, the relations might, at their option, reserve to the party a maintenance.' p. 225. Why may not the Hindu relations of any one who becomes a Christian make a successful attempt to prove that he did so from motives of avarice, and thus get him excluded from his share of the inheritance?

"The Muhammadan law on this subject is equally express, and quite as oppressive as the Hindu.

"It is laid down by Mr. W. H. Macnaghten, in his Principles and Precedents of Muhammadan Law, p. 1, as a principle of inheritance, according to the Suni doctrine, that 'Slavery, homicide, difference of religion, and difference of allegiance, exclude from inheritance;' and by a precedent quoted at p. 86 of that work, it is evident, that although apostacy from Muhammadanism would not invalidate the descendant's right to property devolving on him by the death of his ancestor before his conversion, he would be entitled to none whatever originally devolving on him after his change of religion. See also sect. vi. p. 21, of the same work, where it is assumed that 'entire exclusion' from inheritance is produced by becoming an infidel. That the Schia doctrine of inheritance on this point agrees with the Suni, is mentioned in the same work, p. 40; and of course the results, by this interpretation, would be equally oppressive.

"It is right to add, that by the most express enactments of the Koran, on which the code of civil law is founded, a Musalmán, on becoming an infidel, is liable to deprivation of the property he has himself acquired, as well as of that which descends to him by inheritance.

"From the preceding facts and statements, the legitimate conclusion deducible is, that in British India a renouncement of Muhammadanism necessarily deprives the convert of all right to property, ancestral or acquired, devolving on him, or possessed by him, at the time of this conversion; and that a renouncement of Hinduism necessarily excludes the convert from the present and disqualifies him for the future possession of any ancestral property, and also, according to many authorities, of any property that is self-acquired.

"In having thus directed the attention of the public to the present subject, we conceive that an important duty has been discharged; and we might leave it to the good sense of the community to judge of the propriety or impropriety, the justice or the injustice, of such a law as that now described. At the same time, a few observations, tending to illustrate the real nature of the grievance, and suggest an appropriate remedy, may not be thought misplaced.

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"I. Proceeding on the supposition that the facts and statements already given are incontrovertible, we must briefly advert to the evil nature and consequences of the law.

"And our first observation is, that the law, when viewed simply in reference to mere civil rights, must appear to every enlightened man grossly to violate the first principles of natural justice, and such a law therefore as no wise and enlightened government ought ever to sanction or enforce.

"It is not necessary here to point out the advantages of the institution of property, or the source from which the right of property is derived. For our purpose it is sufficient to know that in every civilized society the advantages are acknowledged to be so manifold, as vastly to outweigh all conceivable disadvantages; and that there is attached to the right an inviolability almost approaching to sacredness. These facts are so indisputable, that one end, if not the chief end, of every wise government is, to protect and secure property by the interposition of legal sanctions and penalties. And in cases which concern the fulfilment of righteous contracts, or conspiracy against the government, and in these alone, is it deemed just to alienate property. The justice of the former is founded on the very principles that recognise the right of property: the justice of the latter is founded chiefly on the nature of that act which aims at the subversion of government; as the voluntary effort to overthrow that which alone protects, necessarily annihilates every claim or title to protection.

"What then must wise and enlightened men think of this new case, in which a government, instead of controlling the outward actions, or directing the visible efforts of men for the best interests of society, appears to overstep its proper limits, and in cases of a conscientious change of private opinion, sanctions the infliction of penalties which almost equal in magnitude those attached to that crime, which ranks the highest in the view of every government? As, in the case of high treason, where the penalty of death is inflicted, forfeiture of property affects all generations, so, in the present instance, a mere change of sentiment on a subject that may no more affect the stability of government or the general welfare of society than the change of opinion on a question respecting the relative motions of the earth and sun, but may eminently promote the best interests of both, not only subjects a man to exclusion from 'all the offices and charities of life,' and disqualification for holding or inheriting any species of property, but also involves his posterity in the miseries of the forfeiture, and renders them outcasts, not only from all society, but apparently from all law.

"'Surely,' may every enlightened man, yea, every man who makes any pretence to the knowledge of what is just and righteous, indignantly exclaim, 'Surely this is a case purely fictitious, or it is a highly coloured statement of some of the darkest features of the Inquisition, or an exaggerated representation of some practice prevalent among the ferocious hordes of the desert, or an imaginary picture of what may be reckoned an instance of the most consummate injustice of which even the most ignorant and polluted creature can be guilty!' 'No such thing,' will be the astounding reply; 'it appears to be none other than a barbarous enactment of Hindu law, sanctioned by the British Government.'

"We leave it to the heart of every wise and enlightened Briton to feel, in silence, the sudden surprise, and dreadful humiliation of such a statement.

"2. We next observe that, viewing the subject in reference to religion in general, every sound Theist must pronounce the enactment impious.

"When he reflects that, from the defects of man's knowledge, and the limitations of man's power, he is utterly incapacitated for penetrating the recesses of the heart, and deciding upon its motives, and pronouncing upon its judgments, and estimating the soundness of its convictions, and denouncing penalties on its decisions; and that to the Omniscient God alone belongs the high prerogative of penetrating, without the possibility of concealment, and pronouncing sentence without the possibility of error: he can scarcely regard an act which, without the pretension, virtually implies an usurpation of this high function of Omnipotence, in any other light than as involving real, though it may be unintended, impiety.

"Or when, from the inquisitorial nature of the enactment, he directs his thoughts to its outward effects, and views these in connexion with the moral and physical constitution of the universe; when he reflects that for reasons to him unknown, and yet for reasons which appear to infinite wisdom and goodness to be sufficient, the Eternal God causes his sun to shine on the just and the unjust, sending down rain to fertilize the soil, and ensure a rich abundance of fruit for the sustenance of the inhabitants of every clime, and the professors of every religion; and when, in perfect contrast to all this, he considers a human ordinance that appears to condemn the constitution established by an all-wise and all-gracious God, by involving the principle that in one portion, at least, of the habitable globe, teeming with myriads of rational beings, a conscientious change from one system of religious belief to another, both of which are alike tolerated in the great system of Providence, necessarily disqualifies for the enjoyment of those bounties of nature so richly provided, and formerly, it may be, so amply possessed; he cannot possibly regard such an ordinance in any other light than as an impious contradiction to the divinely constituted order of things.

"3. Once more, we observe that, viewed in reference to Christianity, and a Christian Government, the real Christian must feel such a law to be in palpable contradiction to all the feelings and principles by which he ever professes to be actuated, and which he believes to be enstamped with the signature of Divinity, as well as a glaring outrage to the revealed will and declared purposes of the Infinite Mind.

"As a man of enlightened understanding, he clearly perceives that the law is subversive of the first principles of justice: as one who is convinced of the existence of an Almighty superintending Power, he cannot divest it of the charge of impiety; but as a Christian, he sees

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sees it accompanied with other and peculiar aggravations; peculiar, we say, because in his mind it stands connected with new facts, combined with new principles, and associated with new manifestations of the Divine mind.

"His first thoughts might be, that deeds which involve injustice and impiety may be accounted equally unjust and impious, whether committed by a professing disciple of Christ or an abandoned reprobate; yet that, regarded as the acts of the latter, they maintain a character of perfect consistency; while, regarded as the acts of the former, they betray an inconsistency so monstrous, that no language can supply an adequate expression for it.

"And the inconsistency would appear greatly aggravated, when he reflected that the particular deed in question, which, even when viewed apart from Christianity, involves injustice and impiety, also tended to counteract the revealed intentions of the Almighty, by opposing a powerful obstacle to the spread of that religion which its Divine Author designed to become universal, and, in furtherance of the design, commanded his disciples to promulgate, as the richest blessing, to all nations under heaven.*

"On further reflecting that, from the wretched constitution of society in India, the embracing of Christianity is, in other respects, attended with consequences the most injurious and distressing, such as loss of home, employment, reputation, &c., he might be inclined to exclaim: 'What! as if these dreadful results were not sufficient to excite commiseration, shall a Christian Government, by an apparent refinement of cruelty, proceed a step further in the progress of actual, though it may be unintended persecution, and deprive the individual who has been unfortunate enough to embrace the Christian faith of the very means of subsistence, and that too by sanctioning an enactment which implicates posterity in the same miserable fate, and which, if it continue to be enforced, however numerous may be the persons converted to Christianity who have been in respectable circumstances, must suddenly reduce all of them, and, as far as this law shall operate, their posterity also, to a state of total destitution and beggary; and thus a whole community be established, to become a burden instead of a blessing to society?' †

"II. We

* That this obstacle is not imaginary, but operates widely in practice, is a fact, the knowledge of which is co-extensive with the active exertions of any individual in disseminating Christian truth. The nature of the obstacle will best appear from the statement of one, whose well-known character must add weight to any testimony, and whose name will long be revered as associated with the rise and progress of Christianity in India. From a communication with which the venerable Archdeacon Corrie favoured the sub-committee, the following is an extract:—

"Caste is doubtless a great barrier against the diffusion of Christianity in this country, not solely, however, as depriving a person of the right of inheritance, but generally as involving a kind of outlawry, to which even the poorest are subject.

"I have known instances where Hindus possessing a share in undivided property, have been allowed by the other members of the family to retain it, after embracing Christianity; but this has arisen entirely out of the peculiar circumstances either of convenience or personal attachment. There can be no doubt, however, that the temporal loss attending loss of caste does prevent many from coming at all to the consideration of the grounds upon which Christianity rests. The journals of the late Rev. Abdool Museeh, published in the Missionary Register between 1813 and 1827, will supply many instances of this. I refer you to his journals rather than those of any European missionary, as he could more certainly ascertain the minds of his countrymen. One instance I may mention, which is strictly to the point in question, of a person named Bukhtawur Singh, who died at Chunar in October last. He was a person of very superior understanding, and became acquainted with the truths of Christianity several years since. He constantly attended Christian worship, generally accompanied the missionaries when they preached in the town, stood by them, defended their doctrine in a manner which for the most part silenced gainsayers, and bare all the reproach of being a Christian. Yet this man resisted all arguments used to induce him to submit to baptism, urging that should he lose caste by joining himself to the Christian church, he should never be able to recover any of the money owing to him, and should be reduced to beggary."

† We are glad that it is in our power to confirm many of the preceding facts and inferences, by an appeal to the written authority of Mr. Macan, of the Honourable Company's civil service, and late judge at Juanpore. This document establishes many important points; among others the following: that such a law exists, and is usually interpreted as we have already described; that it is unjust in its nature, and injurious in its effects; that it presents a powerful barrier, "not only to the spread of true religion, but to the improvement of the country, and the civilization of the people;" and that it places a British judge in a situation that offers violence to his principles as an enlightened man, and to his feelings as a Christian. The following is an extract from Mr. Macan's printed speech, delivered at the annual meeting of "The Bengal Auxiliary Missionary Society," on Wednesday, March 18, 1829:

"It may not, however, be considered out of place just to mention here, that there are some obstacles to the spread of the Gospel amongst the rich and respectable natives which are really very appalling in their nature. I allude to the Hindu and Muhammadan laws of inheritance, as recognised within the British dominions; by which persons of those persuasions, professing Christianity, may not only be prevented from succeeding to any share in hereditary property to which they might otherwise be entitled, but are actually liable to be deprived of any ancestral estates which they may be in possession of at the time of their embracing Christianity. Thus, to the loss of caste, and exclusion from kindred and friends, is added absolute beggary; and with such painful sacrifices in prospect, who can be surprised that the rich and respectable natives should feel some reluctance to pay that attention to our missionaries, and to subjects connected with religion and education, which, under other circumstances, they might be disposed to do?

"The faithful missionaries of all denominations have removed every impediment to the diffusion of religious knowledge which zeal and diligence could effect; they have mastered the languages of the

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"II. We are not unprepared to expect that many may be disposed to regard the preceding facts and inferences in the light of magnifying a molehill into a mountain, and then making a foolish and clamorous parade in our attempt to demolish it; but is it really so?

"If there be meaning in language, and sincerity in the statements of honourable men, do not the probabilities in favour of the representation we have given of the existing state of the law vastly preponderate? And if so, we leave it to the good sense of our readers to determine whether, in its nature and consequences, it is not already a mountain of iniquity.

"For the sake, however, of truth and justice, as well as with the view of meeting the scruples of some, and the objections of others, we proceed to notice some of the grounds on which it may be pleaded that a degree of uncertainty still attaches to the subject.

"1. And first, let it be observed, that the law respecting the loss of caste, as it affects the right of inheritance, is not a separate or isolated law. The case of the outcaste is constantly associated with many others that operate as causes of disinheritance. And the nature of this connexion, together with the kind of ambiguity to which, in the estimation of many, it may lead, will best be understood from the following extracts:

"In Macnaghten's Precepts and Precedents of Hindu Law, vol. ii. p. 133, it is stated: 'According to the Hindu law, an impotent person, one born blind, one born deaf or dumb, or an idiot, or mad or lame, one who has lost a sense or limb, a leper, one afflicted with obstinate or agonizing diseases, one afflicted with an incurable disease, an outcaste, the offspring of an outcaste, one who has been formerly degraded, one who has been expelled from society, a professed enemy to his father, an apostate, a person wearing the token of religious mendicity, a son of a woman married in irregular order, one who illegally acquires wealth, one incapable of transacting business, one who is addicted to vice, one destitute of virtue, a son who has no sacred knowledge, nor courage, nor industry, nor devotion, nor liberality, and who observes not immemorial good customs, one who neglects his duties, one who is immersed in vice, and the sons whose affiliation is prohibited in the present age, are incompetent to share the heritage; but these persons, excepting the outcaste and his offspring, are entitled to a suitable provision of food, raiment, and habitation.' On which the author remarks: 'Were these disqualifying provisions indeed rigidly enforced, it may be apprehended that but very few individuals would be found competent to inherit property, as there is hardly an offence in jurisprudence, or a disease in nosology, that may not be comprehended in some one or other of the classes.'

"Again, the same gentleman, in his Principles and Precedents of Muhammadan Law, p. 89, says:—'Both the causes here mentioned [mental derangement, or any description of insanity and blindness] operate to exclude from the inheritance, agreeably to the provisions of the Hindu law, "Eunuchs and outcastes, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share in the inheritance."'—Sir W. Jones's Translation of the Institutes of Manu, chap. ix. sect. 201. But, adds Mr. Macnaghten, 'these absurd provisions seem to be entirely obsolete in the present day.' While Mr. Colebrooke, who wrote only a few years ago, expresses his opinion, as we have seen above, that 'leprosy and similar diseases, natural deformity from birth, &c., would doubtlessly now exclude;' and says, 'I apprehend it would be to be so adjusted in our Adawluts.'

"Once more, there is recorded by Sir T. Strange, in his compilation on the subject of Hindu law, a case which came before the Sudder Dewany Adálat in Bengal, in 1814, well calculated to furnish additional illustration. In this case, says he, 'the party had been guilty of a series of profligate and abandoned conduct, having been shamefully addicted to spirituous liquors; having been in the habit of associating and eating with persons of the lowest description and most infamous character; having wantonly attacked and wounded several people at different times; having openly cohabited with a woman of the Muhammadan persuasion; and having set fire to the dwelling-house of his adopted mother, whom he had more than once attempted to destroy by other means. The pandits declared, that of all the offences proved to have been committed by the individual, one only, viz. that of cohabiting with a Muhammadan woman, was of such a nature as to subject him to the penalty of expulsion from his tribe (to the exclusion, of course, from inheritance) irrevocably, and of this opinion was the court.' Now, it scarcely admits of a doubt, but that in another court, influenced by other pandits, other offences among those mentioned would have been deemed sufficient to subject the party to the penalty of expulsion from caste, and consequent exclusion from inheritance.

"From these and similar statements, the fact is certain, that the case of the outcaste is associated with many others; that several of these other cases are, in practice, regarded as obsolete;

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the country; they have translated the Scriptures into the various dialects of India; they have written tracts, and established schools; but the obstacle which has been alluded to, they cannot surmount. It is to be hoped, however, that under an enlightened Christian Government, such a barrier, not only to the spread of true religion, but to the improvement of the country, and the civilization of the people, will not long be allowed to exist. But until it is broken down, often must the missionary, while reasoning of righteousness and temperance, be pained to hear the language of Felix to the Apostle Paul, 'Go thy way for this time; when I have a more convenient season, I will call for thee.' Often, too, it is to be feared, will the proud breast of many a Briton be forced to swell indignant within him, at being obliged, while presiding as a judge, to dismiss from before his judgment seat, to penury and obscurity, the humble followers of his blessed Redeemer; and for no other reason, than because the name of Jesus shall prove dearer to the heart, than father or mother, houses or home, than wife or children."

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obsolete; and that hence, in the view of some persons, there arises an uncertainty whether the case of the outcaste may not be included in the number of those that may be considered as obsolete.

"Now we must observe, that, although all the prohibitions and precepts should now be practically disregarded, the very circumstance that, among those who are accounted authorities on the subject of Hindu law, there exist opinions so widely different as to the extent to which the law should be allowed to operate, must render every decision fearfully uncertain, and thereby open up a perpetual source of angry and destructive litigation.

"Besides, while the law is unrepealed, it must be evident that, though by sufferance, none of the disqualifications mentioned would now be allowed to operate, yet that it is by sufferance only. It is not by any legal right that individuals themselves, or their ancestors, to whom might attach one or more disqualifications, have entered on the possession of property, or are permitted to retain it; and, therefore, any ill-disposed person has the power, legally, to annoy, and probably to disinherit them. This is a state of society far from being desirable, and is, to our knowledge, felt to be so by many respectable Hindus, who are aware, from their acquaintance with the law, of the jeopardy in which their continued possession of the property they enjoy is thus placed.

"But it is allowing far more than is sanctioned, either by practice, or the declared sentiments of qualified judges, when we suppose that all the disqualifications enumerated have become obsolete. However wide the difference of opinion may be as to some of the causes, there is no difference in the case of the outcaste. If specified at all, apart from the rest, it is only to show, that towards it there is no abatement whatever in the rigours of the law, no diminution of severity in practice. And, indeed, while the feelings and principles of the Hindus remain unchanged, it were unnatural to suppose it otherwise. For, although the loss of caste ought no more to operate as a disqualification than the other causes supposed to have now become obsolete, yet as the law is understood and recognised, and a convert to Christianity, as such, is the object of religious enmity, it will, in his case, no doubt, be always enforced; so that he must, as such converts have always hitherto done, submit to the entire deprivation of his property, without the hope of redress in the courts.

"After all, though we should allow, what appears to be contrary to fact, that the case of him who loses caste by embracing another religion, and Christianity in particular, is involved in uncertainty, how can this vindicate the propriety of allowing such a subject to continue in that condition for one year, one day, one instant? What! has a Christian nation come to such a state of lowered honour, suspicious piety, and glaring inconsistency, that it should declare it to be uncertain whether, as often as occasion arises, it may not commit what has been shown grossly to outrage all justice, and piety, and consistency? And will a great, and wise, and enlightened Christian Government brook such a defence? Rather, will it not utterly reject it as the insidious defence of an enemy, and, by its decisive conduct, proclaim, '*Timeo Danaos, et dona ferentes?*'

"2. Many respectable men, Hindus as well as Europeans, feeling alive to the enormity of the law as generally understood and enforced, and desirous, from motives of justice and humanity, that it could be pronounced unfounded, and yet professing to feel dissatisfied with that mode of getting rid of the grievance just now described, have recourse to another method, which, at least, has the merit of plausibility and benevolent intention. And we know not a more satisfactory way of conveying an intelligible idea of this other and distinct mode of solving the difficulty, than by a quotation from a pamphlet, recently published by the learned and ingenious Rammohun Roy. The quotation refers to a subject entirely distinct from the present, and is adduced merely for the purpose of illustrating the nature of the principle on which the new solution is founded.

"'The Dayabhaga, a work by Jímútváhan, treating of inheritance, has been regarded by the natives of Bengal as of authority paramount to the rest of the digests of the sacred authorities. The author of this work, after quoting two extraordinary texts of Vyasa, as prohibiting the disposal, by a single parcener, of his share in the immoveables, under the notion that each parcener has his property in the whole estate jointly possessed, and, in reply to the question, what might be the consequence of disregard to the prohibition conveyed by these texts of Vyasa? proceeds to say: "But the texts of Vyasa exhibiting a prohibition, are intended to show a moral offence, since the family is distressed by a sale, gift, or other transfer, which argues a disposition in the person to make an ill use of his power as owner. They are not meant to invalidate the sale or other transfer." Ch. ii., sect. 28. A partner is as completely a legal owner of his own share (either divided or undivided), as a proprietor of an entire estate; and consequently a sale or gift executed by the former, of his own share, should, with reason, be considered equally valid as a contract, by the latter, for his sole estate. Hence, prohibition of such transfer being clearly opposed to common sense, and ordinary usage, should be understood as only forbidding a dereliction of moral duty, committed by those who infringe it, and not as invalidating the transfer.

"'In adopting this mode of exposition of the law, the author of the Dayabhaga has pursued the course frequently inculcated by Manu and others, a few instances of which I beg to bring briefly to the consideration of the reader, for the full justification of this author. Manu, the first of all Hindu legislators, prohibits donation to an unworthy bráhman in the following terms: "Let no man, apprized of this law, present even water to a priest who acts like a cat, nor to him who acts like a bittern, nor to him who is unlearned in the Veda." (Ch. iv., v. 192.) Let us suppose that, in disregard to this prohibition, a gift has been actually made to one of those priests; a question then naturally arises, whether this injunction of Manu's invalidates the gift, or whether such infringement of the law only renders the

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the donor guilty of a moral offence. The same legislator, in continuation, thus answers: "Since property, though legally gained, if it be given to either of those three, becomes prejudicial in the next world, both to the giver and receiver." (v. 193.) The same authority forbids marrying girls of certain descriptions, saying, "Let him not marry a girl with reddish hair, nor with any deformed limb, nor one troubled with habitual sickness, nor one either with no hair or with too much, nor one immoderately talkative, nor one with inflamed eyes." Ch. iii., v. 8. Although this law has been very frequently disregarded, yet no voidance of such a marriage, where the ceremony has been actually and regularly performed, has ever taken place, it being understood that the above prohibition, not being supported by sound reason, only involves the bridegroom in the religious offence of disregard to a sacred precept.'

"Precisely in the spirit of this mode of interpretation, are many disposed to regard the provisions of the law under consideration. They regard them in the number of those precepts and prohibitions that are received as morally, but not legally binding; disobedience implying a moral or religious offence, but no infringement of a legal right; so that in this way an outcaste might legally retain his property, and yet be regarded with abhorrence, as guilty of a sin of the deepest dye.

"We confess we admire the ingenuity rather than the soundness of the principle, as applicable to the present subject. It affords no practical relief from the pressure of the evil; it suggests no adequate remedy. Indeed, before it can possibly effect either, its advocates must convince the great mass of the Hindu population, as well as the executive authorities, of its propriety. But this is a task too Herculean ever to be attempted; and even though the belief in its soundness and propriety were extended far beyond the very narrow circle to which at present it is confined, it would then only resolve itself into that case of dreadful uncertainty, the mischievous nature of which has already been alluded to in such a way as to require no repetition.

"III. Having thus endeavoured to point out the nature of the evil, we must now very briefly advert to the subject of a remedy.

"And here it is almost unnecessary for us to refute the objection, that the government being pledged to administer justice according to the Hindu and Muhammadan laws of inheritance, interference with these laws would infringe the toleration guaranteed to our fellow-subjects. It is evident, from the preamble to various Regulations issued by different administrations, that the duty of the government has always, in its own view, been bounded by the limits of justice; and that, by every principle of toleration, abstractedly considered, a Hindu or Muhammadan is no more justly subject to the loss of property on becoming a Christian, than a Christian would be on embracing (as some have done) the profession of the Muhammadan faith.

"We are aware, however, that the difficulties attending an improvement of the system are alleged by some to be insuperable. To several most respectable members of the Honourable Company's civil service we have mentioned the subject, and all unite in deploring it as an evil of no ordinary magnitude, but express their regret that the way of obviating the difficulty does not appear so evident.

"We certainly make no pretensions to the discovery of a plan in all respects unexceptionable; and yet a few suggestions on the subject, as being well intended, may not be deemed presumptuous.

"1. Since, in accordance with the improved state of Hindu feeling, many of the various disqualifications, mentioned in the law that includes the case of the outcaste, have become obsolete, might it not be possible, as it certainly appears desirable, for the protection of persons already in the possession of property, and the prevention of future outrages against all that is just and excellent, to enact that none of them should be allowed to operate, but that property should descend in the proportions directed by the Hindu law, irrespective of those disqualifications? Thus the difficulty would be obviated, much to the satisfaction of the great body of Hindus, and, if thought expedient, without the appearance of even a reference to Christianity.

', 2. The practice of government in other cases might well sanction a more direct method. One instance directly to the purpose may be specified.

"For the information of some of our readers it may be necessary to state, that as the Dayabhaga is reckoned the standard work on the law of inheritance by the natives of Bengal, so is the Mitakshura, by Vignaneshwar, regarded as the standard work on the same subject throughout the Upper Provinces and a great part of the Dakhan. Now, in the latter work is contained the following authoritative decision: Mitakshura, ch. 1, sec. 1, Art. 27. 'Therefore it is a settled point, that property in the paternal or ancestral estate is by birth, (although) the father have independent power in the disposal of effects other than immovables, for indispensable acts of duty, and for purposes prescribed by texts of law; as gifts through affection, support of the family, relief from distress, and so forth; but he is subject to the control of his sons and the rest, in regard to the immovable estates, whether acquired by himself, or inherited from his father or other predecessor; since it is ordained, "Though immovables or bipeds have been acquired by a man himself, a gift or sale of them should not be made without convening all the sons. They who are born, and they who are yet unbegotten, and they who are still in the womb, require the means of support: no gift or sale should, therefore, be made."'

"Now we ought to observe, it is the fact that, under Regulation VII. 1825, and the Regulations to which it refers, Hindu ancestral landed estates in the Upper Provinces have been always considered saleable by public auction, in satisfaction of decrees of court, not only for revenue

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revenue due to government, but even for private debts incurred by the occupants for the time being. Now, in exact accordance with the spirit and intention of such innovation, and apparent disregard for the sacred authority of the Hindu law, might not government, for the sake of suppressing the most grievous outrages against all that is just and consistent, at once enact, that henceforward a change of opinion on matters of religion shall in nowise affect the just and legal right to hold or inherit property?

"3. The following is another way of effecting the object, differing from the latter in the mode rather than the principle, and is completely in accordance with the former practice of the government of Bengal, and might be made applicable to both Hindus and Musalmans.

"Besides many other great improvements of the Muhammadan Code (on which criminal law as administered by the Honourable Company is founded), introduced by Regulation IV. 1822, one very important and salutary alteration, very much in point, has been introduced in the case of murder by Musalmans. By the Muhammadan Code it is enacted, that no Musalman should be liable to kissas (*i. e.* death by retaliation) for murder, unless one of the witnesses be a Musalman. This restriction being justly deemed contrary to impartial justice, a Regulation was passed, by which the múftí is directed to give his opinion whether the accused is guilty or not guilty by the evidence, had the witnesses been Muhammadans; and sentence is passed accordingly. Might not, with equal propriety, a Hindu or Muhammadan law officer be directed to give his opinion as to the share of property which would have belonged to any individual or his heirs becoming a Christian, had he remained a Hindu or Musalman; and might not that property be secured to him accordingly?

"We presume not, by the foregoing hints, to dictate in what way the injustice of which, on behalf of a number of converts to our common faith, already large and annually increasing, we have ventured to complain, should be removed; but it appeared highly proper for us to exhibit some feasible plan of obviating the supposed difficulty, with the hope of proving that it is by no means insuperable, and that its removal is in strict accordance with the former practice of government in similar cases of injustice, and would not, in all probability, excite the least dissatisfaction in the minds of our native fellow-subjects."

Such was the statement prepared and authenticated 10 years ago. Of it several copies were forwarded to leading individuals and committees of societies at home, who had embarked on the enterprise of Indian renovation. A partial agitation was in consequence commenced. The Court of Directors and other public bodies were memorialised on the subject. What share of influence, direct or indirect, may have been exerted by the Calcutta statement, it is impossible to ascertain. Nor is it a matter of any moment. The satisfactory result was, that early in 1832 the Court of Directors did send a despatch to the Governor-general in Council, to institute inquiry and speedily enact some adequate legislative remedy. In conformity with the declared sentiments and express request of the Honourable Court, the Indian government lost no time in giving the matter a full and deliberate consideration. The gratifying issue soon appeared. Among the Regulations of 1832, 16th October, was promulgated the following:

"Clause 8. Such part of Clause 2, Section 3, Regulation VIII. 1795, enacted for the province of Benares, which declares that, in causes in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter, excepting when Europeans or other persons, not being either Muhammadans or Hindus shall be defendants, in which case the law of the plaintiff is to be made the rule of decision in all plaints or actions of a civil nature, is hereby rescinded; and the rule contained in Section 15, Regulation IV. 1793, and the corresponding enactment contained in Clause 1, Section 16, Regulation III. 1803, shall be the rule of guidance in all suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions that may arise between persons professing the Hindu and Muhammadan persuasions respectively.

"Clause 9. It is hereby declared, however, that the above rules are intended, and shall be held to apply to such persons only as shall be *bonâ fide* professors of those religions at the time of the application of the law of the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suit may be of different persuasions; when one party shall be of the Hindu and the other of the Muhammadan persuasion, or when one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

The announcement of this new Regulation was hailed at the time as an invaluable boon, being an important modification of the ancient barbarous law. Still doubts and difficulties of a practical nature kept floating around the subject, casting their portentous shadows over the first timid motions of weak and irresolute minds. In order, therefore, to ascertain the present realities of the case, viewed as a question of law, certain queries have been propounded, and by competent judges answered, in substance, as follows:

1st. Does a Hindu or Muhammadan, by renouncing his ancestral faith, lose his right to ancestral property?—*Ans.* By Regulation VII. of 1832, sections 8 and 9 (quoted above), he

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he would lose no civil right, if not an inhabitant of Calcutta. In other words, if resident anywhere in the mufassal or provinces, a native, being amenable to the mufassal courts only, which are held bound by Act of Parliament to be regulated by the enactments of the Governor-general in Council, may avail himself of the Regulation which declares, that the laws and usages of particular religions "shall not be permitted to operate to deprive him of any property to which, but for the operation of such laws, they would have been entitled." On the contrary, any native resident in Calcutta, being subject to the Supreme Court, which in this respect is governed by Hindu and Muhammadan laws, would forfeit all right to property by loss of caste, which is essentially involved in a renunciation of, or apostacy from, his ancestral faith; but if the property be actually vested in the native at the time of his losing caste, by apostacy or otherwise, the case is declared to be doubtful.

2d. Does he lose his right to personal or chattel property?—By mufassal law, no; by Supreme Court law, yes.

3d. Does he lose his right to his share of family property, landed or chattel, acquired by himself (either in conjunction with the other family members or as manager of their joint affairs), previous to his repudiation of the Hindu or Muhammadan faith?—By mufassal law, no; by Supreme Court law, yes.

4th. Would ancestral or acquired property be still heritable or retainable by mufassal law, irrespective of all conditions?—No. If certain conditions were attached to the property which the inheritor or holder refuses to perform, he might thus forfeit it, even by mufassal law.

5th. What is the state of the law, with reference to those who are neither British-born subjects, Hindus, nor Muhammadans?—East Indians, Parsis, Armenians, Jews, Greeks, and others, make sad complaints of the discrepancy between Supreme Court and mufassal law, especially with regard to rights of inheritance. In Calcutta, the Supreme Court obliges them (not being Muhammadans nor Gentoos) to conform to the English law in this respect. In the mufassal, the judges acknowledge they have no law at all to guide them. In some districts the case will be decided by Hindu, and in others by Muhammadan law; in some, by the inheritance laws of the parent nation to which the suing parties respectively belong, and in others, by the English or canon law (that of the Pandects), according to the varying sentiments or caprice of the acting judge.

From these replies it is evident that the state of the law relative to inheritance and acquired property, is still far from being satisfactory. In order, therefore, to approximate the ends of legislative wisdom, it is recommended or suggested,

First, that as it is a breach of all uniformity and a violation of all equity that any class of subjects should be without law at all, or that one law should be administered to the native inhabitants of the metropolis, and another, in many important respects entirely opposite, to the native residents throughout the mufassal—the mufassal and metropolitan law be assimilated in one consistent and harmonious code, which may extend to East Indians and Parsis, &c. as well as Muhammadans and Hindus.

Secondly, that—as it is contrary to the first principles of natural reason and natural justice that a change of religious sentiments, more especially when that change involves an abjuration of error and superstition, should entail a forfeiture of that property which belongs to a man of natural right—it be enacted, that one general and all-comprehending law be framed in the spirit of the eighth and ninth clauses of Regulation VII. of 1832, or agreeably to the tenor of the admirable recommendation of one of the most learned and respected of our Indian judges, Sir Hyde East, who, in his examination before Parliament, previous to the last renewal of the charter, earnestly and powerfully "submitted to the consideration of Government that their protecting hand should be so far extended as to make provision that no native of India shall forfeit any rights of property or any personal benefit, on account of his profession of any particular faith or doctrine, which he would be entitled to and claimed by any law of title, grant, inheritance, or succession established in India, which was binding on the persons last seised or possessed, or on those from or through whom they claimed."

Thirdly, that in the event of conditions being attached to the property connected with superstitious or idolatrous usages, conditions the imposition of which may be pronounced unwarrantable, as being opposed to and therefore superseded by the higher obligations of natural justice and revealed law—conditions, the performance of which may be adjudged intolerable, as being subversive of the dictates of reason and the rights of conscience—the judge or magistrate be empowered, in accordance with the spirit of British law and the practice of the High Court of Chancery, to review, over-rule, modify, or cancel such unreasonable conditions altogether, or otherwise adjudicate, for the relief of the party concerned, agreeably to the first principles of natural equity and the suggestions of a good conscience.

The passing of a legislative enactment embodying these or similar recommendations would do much towards remedying the present untoward state of the law of inheritance and succession in this land. Apart from the many reasons urged in the "Statement of 1830," there is another, arising out of the present movements of Government itself and the sanctioned operations of societies and individuals, which loudly challenges attention. What is the natural, the inevitable effect which must ensue, not merely from the directly evangelizing measures in progress, but from the success of the Government and other educational schemes for the enlightenment of this mighty people? From the nature of the component parts of Hinduism, contrasted with the range of European literature, science, and theology, is it not demonstrable that one grand effect, wherever a high English education is imparted, will

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will be the demolition of those errors which constitute at once its basis and superstructure? Is not such abstract or theoretic demonstration borne out by numberless facts? Listen to the testimony of one whose experience and position in native society must invest his assertions with authority. The Reformer, an English newspaper, conducted several years ago by a native editor of rank, learning, and wealth, and the organ of a large and influential body of educated Hindus, contrasting the visible fruits of ordinary missionary exertion with those realised by the Hindu College, thus proceeded emphatically to ask, "Has it (the Hindu College) not been the fountain of a new race of men amongst us? From that institution, as from the rock from whence the mighty Ganges takes its rise, a nation is flowing in upon this desert country, to replenish its withered fields with the living waters of knowledge. Have all the efforts of the missionaries given a tithe of that shock to the superstitions of the people which has been given by the Hindu College? This at once shows that the means they pursue to overturn the ancient reign of idolatry is not calculated to ensure success, and ought to be abandoned for another which promises better success."

Without being at all pledged to the accuracy of this comparative estimate, must we not hold such a genuine native testimony to be conclusive as to the operative power of a superior English education in overturning the superstitions and idolatries of India? If so, must not the government perceive into what a predicament of inconsistency it reduces itself, as well as all the friends of native education, if the law of inheritance and succession be not speedily ameliorated and made co-extensive with the wants and exigencies of the entire body of the people? An awakening and enlightening knowledge is communicated which sweeps away the gross absurdities of idolatry and superstition from the minds of those who acquire it. In this land almost all property is left burthened with conditions of an idolatrous and superstitious character. Mark, then, the dilemma into which, in consequence of the government and other educational measures, the educated Hindu is brought. If he performs the superstitious or idolatrous conditions in order to secure his property, he must, by such performance, do violence to his reason, his conscience, and his publicly avowed sentiments; in a word, he must act the part of a wicked and deceitful hypocrite. If, on the other hand, he has moral fortitude enough to resist any temptation and suffer any loss rather than submit to the sacrifice of reason, conscience, and character, he must, while the law remains unaltered, by his non-fulfilment of the superstitious and idolatrous conditions, forfeit all right to property; in a word, as if the acquired possession of superior intelligence were a crime of the first magnitude, he must, in consequence of his being the happy possessor of such intelligence, submit to the infliction of one of the highest penal severities.

But as there is in human nature an extreme repugnance to the loss of property, and as time will show that, however much power and wealth may be flattered by the interested and the needy, a course of systematic hypocrisy must eventually call forth the contempt and indignation of an enlightened community, what may we expect to be the operation of the present law as it affects the future spread of sound knowledge and intelligence among the natives? What can we expect, except that the spread of both will be vastly and indefinitely retarded? What a solemn mockery to be, on the one hand, holding out all manner of encouragements, in the shape of salaries to qualified teachers, and stipends and scholarships to promising students, to stimulate to the pursuit and cultivation of superior knowledge and intelligence; and on the other, by a continuance of the present law, holding out positive discouragements of a nature too appalling to fail of fatal success. And herein lies the strength of these discouragements. Superior intelligence, if accompanied by a good conscience, may become penal, by being attended with the deprivation of all one's possessions, and that too in such trying circumstances as to loss of caste and reputation, that the immediate punishment of death might often be more tolerable. Surely that man knows little of human nature who does not perceive in this the surest check to all inquiry, and the most powerful restraint on every desire to acquire or cultivate any knowledge which must, without a violation of conscience, issue in such disastrous results. The good things of this life take far too firm a hold of the heart of man to admit of a different inference being drawn; yea, such is the strength of that hold which the perishable treasures of this world take of all the powers and faculties of his soul, that man is not only apt to become insensible to the glories of an eternal inheritance, but apt to listen to any account of them with positive dissatisfaction, and is too often willing to forego the anticipated enjoyment of God's favour, and brave the terrors of God's wrath, rather than be induced on any account to withdraw the strength of his affections from his present possessions.

If such be the power of opposition which the enjoyment of the good things of this life ever presents to the ready reception of all truth, as opposed to error, prejudice, self-seeking, or sinful compromise, even in circumstances the most favourable, when no demand is made but the reasonable and salutary demand, not exclusively to direct towards them the affections of the heart, but transfer these to a far more glorious and enduring inheritance, who can estimate the force of resistance which a mind, pervaded in all its powers by an almost superhuman avarice, must present to the very first proposal, as well as to the incipient desire, practically to embrace any improved system of knowledge, any scheme of unbending principle, whether human or divine, the embracement and tenure of which may involve irrecoverably the total forfeiture of all that the soul naturally most values? Accurately to estimate the power of such resistance, till the lapse of time and experience have sufficiently illustrated the awful nature of the dilemma, is altogether impossible; but it is very possible, yea, very easy, to perceive how inevitable is the certainty of its existence, since the slightest consideration will suffice to show that the supposition of its non-existence would imply that the usual processes of nature are reversed and the constitution of man unhinged; that

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actions the most prejudicial to every worldly interest are conducted without a motive, and extraordinary effects produced, either entirely without or directly contrary to the ordinary operation of natural causes.

Let then the Government of this great empire speedily emancipate itself from the meshes and the remnants of a barbarous jurisprudence; let it, by a wholesome infusion of the spirit and principles of British justice, speedily divest itself of the anomalous and degrading attitude of appearing to sanction or offer, on the one hand, the largest bounties upon vivifying and illumining knowledge, and, on the other, to expose its fairest fruit to the consuming blight of legal pains and penalties; let it no longer, in point of apparent irreverence and inconsistency in its manifested conduct, provoke a comparison with the procedure of the man who, with the amplest proffers of recompense and reward to all that may strive to raise the most luxuriant produce from an unpromising soil, would yet guard, by the threatened interference of an armed force, against every attempt to sow the seed, or, if already somehow or other deposited, would, by the visitation of flaming fire to blast and devour, prevent the possibility of its ever attaining to maturity. Let the supreme Government of these realms prove faithful to the God of Providence by dealing out perfect righteousness and judgment to the multitudes over whom it has, in a way so marvellous and unprecedented, been constituted the protector and the guardian, and the God of Providence will smile propitious on its efforts, and render its administration a source and surety of abounding prosperity to itself, a guarantee of brightening hope to the millions of the present generation, a fount of reversionary bliss to future myriads, who, as they rise in long succession, may joyously hail the continued waving of the British sceptre, as the surest pledge of the continued enjoyment of their dearest rights and noblest privileges.

V.—*Propositions regarding Marriage and Divorce, chiefly as they affect Native Converts to Christianity.*

Legis. Cons. 10 May 1841. No. 23. Enclosure.

On the importance of the institution of marriage to the peace and well-being of society it were idle to dilate. Contemporaneous with the origin of man, it has survived the wreck and ruin of the fall. Scarcely any tribe, however barbarous, has been known wholly to disregard it. And in the progress of society the due observance of it has ever been found at once a cause and a consequence of advancing civilisation.

It cannot therefore be without the deepest injury to any community, should any class or classes be found to exist therein, whose intermarriages, and all the grave and momentous interests which these involve, are wholly unprovided for; and, consequently, wholly unregulated by any recognised law. But such is the state of things in India. For British-born subjects, Muhammadans and Hindus, laws have been framed and promulgated. But for individuals of other races, whether pure or mixed, and more especially the large and constantly increasing body of natives who have renounced their ancestral faith, no laws whatsoever have been enacted by any established authority.

The deplorable consequences of this absence of all law on a subject so intimately interwoven with the best interests of man, has long been sincerely lamented by the friends of native improvement; and by none more so than by the Christian missionaries of all denominations. In Calcutta, in particular, these have heretofore united for the purpose of endeavouring to secure some commensurate remedy for the great and the growing evil. In January 1835, after repeated discussions, they published the result of their deliberations in the form of six propositions, accompanied by brief but able explanatory notes by the acting secretary, the Rev. W. S. Mackay.

No authoritative measure having yet been founded on these or any other propositions, the subject, in so far as it concerns the case of converts to the Christian faith, has again been taken up by the missionary conference; and, after reiterated discussion at successive meetings, has been handed over to the standing committee for its final and digested report. Accordingly, the chairman of that committee begs leave now to report as follows:—

I. The Bible being the true standard of morals to a Christian government, and its Christian subjects, it ought to be consulted in everything which it contains on the subjects of marriage and divorce; and nothing ought to be determined evidently contrary to its general principles.

Note.—This, with a slight alteration, is the second of the original propositions already referred to; and is too self-evident to require any comment.

II. It is in accordance with the spirit of the Bible, and the practice of the Protestant Church, to consider the State as the proper fountain of legislation in all civil questions affecting marriage and divorce.

Note.—This is the first of the original propositions which the former secretary pronounces "nearly a truism." "No marriage or divorce," continues he, "is legal, unless it be according to the law; and whatever the law enacts, or even recognises, is to be held valid: thus the law practically defines marriage and divorce. It may define wrongly, and place them on other than a scriptural foundation; but so it may do in regard to everything with which it meddles. Under these circumstances, the duty of the Christian is plain. He needs not to seek for such marriage or divorce as is forbidden by the Bible, though legally free to do so; and if the law refuses what the Bible allows, he must submit to its ordinance. (Romans xiii. passim.)

The duty of the minister is a little more complicated.

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Though the state may tighten or loosen the marriage tie, more than the Bible sanctions, it is plain enough that it has no power to force him to use improperly the authority it may have delegated to him; and accordingly, it may be his duty in certain cases to refuse both marriage and divorce. But it seems impossible to deny the validity of either, when sanctioned by the state, on the ground of its wanting the authority of Scripture: otherwise, as Christians are commanded to marry only in the Lord, we would be unmarrying nearly the whole world. The law, for instance, might allow two persons to marry within the forbidden degrees of relationship; but, however much he lamented this, no Christian minister would feel himself at liberty to remarry one of those persons to a third party, while the other was still alive, and the legal union undissolved. If the contracting parties were Christians, and aware of their guilt, it would be a case for church discipline; but in other cases, surely common sense and charity require, that the offenders should be excused. To conclude, marriage and divorce are to be held legal and valid, when recognised in any way by the state; but there may be cases where, though the Christian allows the legal right, he denies the moral rightness: it is his duty to suffer them, but not to form or share in them; to bear his testimony against them, and to search the Scriptures, that he may be enabled to choose his own path aright."

III. A mere contract, oral or written, between the parents of two parties, proposed to be united in wedlock, without the actual celebration of the marriage ceremonial, not being regarded by the natives themselves as of the essence and validity of marriage, ought not to be so regarded by the Christian Church, or the Christian legislature.

Note.—It is found on inquiry that such contracts are occasionally entered into; but that they are not held by the contracting parties themselves to be of the essence or validity of actual marriage. Either parent may resile from his promise, only the party so resiling is liable to reproach or disgrace.

IV. When the marriage ceremonial, authorised by Hindu and Muhammadan law and custom, is formally celebrated between the parties, whatever be their age, we are called on by reason and Scripture to regard such marriage as civilly and legally valid, and, consequently, its obligations as mutually binding.

Note.—It ought ever to be borne in mind that marriage is a contract, both civil and religious. As its essence seems to consist in the union of a man and woman, who are pledged to live together as husband wife, its validity cannot depend on the mode or form of the ceremonial by which it is ratified. That ceremonial may be wholly civil, or partly civil and religious, and it may vary indefinitely with the manners, customs, and sentiments of different nations in different ages. In every country, whether civilised or barbarous, there is some act, form, or ceremony, which is generally held to constitute marriage, and to legitimate the children. When the question therefore is raised, whether we, as Christians, are called upon to regard those marriages as valid and legally binding, which are considered as such, by the tribes or nations to whom the married parties belonged at the time when the matrimonial alliance was contracted and the matrimonial rites duly celebrated? It is humbly submitted that we are so called upon. The very expression of the Apostle, "unbelieving wife, unbelieving husband," i. e. heathen wife, heathen husband, of necessity imports that he regarded them as legitimately husband and wife, while in their heathen state, because so constituted and accounted by their own customs and laws. So our Saviour, when he says, "What God hath joined together let not man put asunder," seems to imply that those were "joined together by an ordinance of God," or lawfully married, or were so united and regarded by the laws and customs which prevailed in his time, though none of the parties had then become believers in Christ.

V. Renunciation of Hinduism or Muhammadanism being regarded by Hindu and Muhammadan law and usage as tantamount to civil or legal death, the non-renouncing party is at liberty to treat the other as repudiated or divorced; but the Christian convert is not entitled to avail himself or herself of the Hindu or Muhammadan law, and regard his or her voluntary renunciation of ancestral faith as of itself releasing him or her from the obligations of the previous conjugal alliance, or as rendering him or her free at once to contract another.

Note.—The law of the unbelieving party may entitle it to regard the other as civilly dead, or legally repudiated. But the law of the believing party does not entitle it to regard the other as *ipso facto* civilly dead, or legally repudiated. A change of religious opinion does not, according to Christian law, dissolve any previously contracted bonds or obligations. Should the unbelieving party, therefore, not avail itself of the conceded right or permission of its own law, but still think it good or well (Συνευδοκει) *i. e.* consent, wish, or will to live with the believing party, and discharge, as before, the duties of husband or wife, it is concluded that the latter or believing party is bound by the previously contracted obligation, to treat the unbelieving party as husband or wife, precisely as if no change of religious sentiment had taken place. *See* 1 Cor. 12, 13, 14.

VI. If the unbelieving party wilfully desert or appear obstinately to refuse to live with the believing party, as husband or wife, such wilful desertion or continued refusal being presumptive evidence of a real or an intended divorce, it is supremely desirable that some legal plan or measure should be devised for universal adoption, whereby the believer might satisfactorily ascertain whether he or she has been definitively cast off or formally repudiated.

Note.—This proposition assumes it as indisputable that in no case whatever, save that of adultery, is the believer entitled to sue for divorce (see Matt. xix. 6—9, and 1 Cor. vii. 10, 11). Whether the Hindu or Muhammadan law declare a renunciation of Hinduism or Muhammadanism

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Muhammadanism to be, *ipso facto*, a just ground of divorce or not, the law of the Christian utterly disclaims the validity of any such ground. Accordingly, if the unbelieving party be willing to abide by the antecedently formed nuptial bond, the believer has no option, no alternative, as in that case. There neither is nor can be any dissolution of the original marriage. But if in consequence of the permission and sanction of Hindu or Muhammadan law, the unbeliever depart, *i. e.* separate himself or herself,—in other words, finally and formally cast off, repudiate, or divorce the believing party,—the latter not being in this case the divorcer but the divorced, must be accounted as freed by the wilful and deliberate act of the former, from the ties and obligations of the previous matrimonial union; and, consequently, at liberty to contract another (*see* Cor. vii. 15). From the present constitution of Hindu society, however, and the entire want of any legislative enactment on the subject, it is often impossible to learn the real mind of the unbelieving party; particularly if that party be the wife. She may be herself in close confinement in her father's house, or in that of some other friend. Her husband, on his conversion, becoming an out-caste, may be positively debarred all access to her. How then is he to discover her own mind, her own unconstrained will or desire, concerning the continuance of her conjugal alliance with himself? How is he to know whether she is obstinately bent and determined to avail herself of her own law, and so to disown and repudiate him for ever? Or, whether from natural affection towards him, or any other cause, she is willing to forego the right and privilege conceded by her own law, and consequently willing still to live with him in conjugal union? Some authorised plan or method by which these important points can be legally ascertained without doing unnecessary violence to natural feeling or national custom seems imperatively demanded alike by the conditions of private and social wellbeing, and the pressing exigency of circumstances

VII. It is therefore humbly suggested, that, in order to ascertain the true sentiments of the unbelieving party, the magistrate be authorised, on petition of the believing party, to have the former (being at least 14 years of age in the case of a male, and 12 in the case of a female,) brought before him, in open court, or in his own private house, or in any other convenient place, there to be questioned in the presence or hearing of the petitioning party and friends, as to his or her willingness or unwillingness to live with and be considered the husband, or wife, of the latter; that, if the unbelieving party be found willing thus to live with the other, he or she be at once pronounced at liberty to do so, and immediate steps be taken to ensure the consummation of such voluntarily expressed wish; but that, in the event of a positive refusal on the part of the unbeliever, at the first examination, the same party (after the lapse of at least a twelvemonth, during which there may be ample scope for reflection on the one hand and conciliation on the other,) be again brought before the magistrate, and similarly interrogated as before; that after all possible means of conciliation have been tried, should the refusal be still persisted in, the fact be publicly announced and officially recorded; and that a copy of such record, countersigned by the magistrate, be furnished to the petitioning party, as the voucher of a legal divorce.

(No. 64.)

From *F. J. Halliday*, Esq., Junior Secretary to the Government of India, to *J. C. C. Sutherland*, Esq., Secretary to the Indian Law Commission.

Legis. Cons. 10 May 1841. No. 24.

Sir,

I AM directed by the Right Honourable the Governor-general in Council to transmit to you, in order to its being laid before the Law Commissioners, a memorial from the Rev. G. Gogerly, and other missionaries, with two enclosures, complaining of certain legal grievances for which they desire a remedy, and to request that the case of the memorialists may be considered by the Law Commissioners in connexion with the subject of the *lex loci* of India, now before that body.

Legislative Dept.

I have, &c.

Fort William, 10 May 1841. (signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

(No. 60.)

From *F. J. Halliday*, Esq., Junior Secretary to the Government of India, to Rev. *A. Duff*, and other Missionaries.

Legis. Cons. 10 May 1841. No. 25.

Gentlemen,

I AM directed to acknowledge the receipt of a memorial to the address of the Right Honourable the Governor-general of India in Council, with enclosures, relating to certain grievances under which native converts at present labour, and to state in reply that the papers have been referred to the Law Commission for their consideration.

Legislative Dept.

I have, &c.

Fort William, 10 May 1841. (signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

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— No. 7. —

APPLICATION OF MISSIONARIES TO REMEDY THE DISABILITIES OF NATIVE CHRISTIANS.

Legis. Cons. 8 July 1842. No. 16.

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commissioners, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Indian Law Commissioners to acknowledge the receipt of your letter under date the 10th instant, and of the memorial therewith transmitted, which they are requested to take into consideration in connexion with the subject of the *lex loci* of India.

2. The memorial refers more particularly to the situation of natives who have abandoned the religious creed of their fathers, many of whom, it is stated, have become members of the Christian Church. This two-fold class, it is represented, "at present labour under sundry legal disabilities of a specific character, and are also left, in reference to many other momentous civil concerns and relationships, without any laws to guide and direct them."

3. On a reference to the draft of an Act for declaring the *lex loci* of the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts, which has been prepared by the Law Commissioners under the instructions conveyed in your letter dated 11th January, the Governor-general in Council will perceive that persons in the circumstances stated, are recognised as subject to the *lex loci*, and that a general provision has been made to guard persons in such circumstances from any loss or forfeiture of rights, in consequence of their renunciation of the religion of their fathers.

4. In Note (*i*) appended to the draft Act, the Commissioners have expressed their opinion that the law to be administered by Her Majesty's Courts should be modified so as to afford the same protection to persons in similar circumstances within their jurisdiction respectively.

Para. 4. The defects of the laws relative to marriages and rights of inheritance.

5. The grievances complained of in the memorial are reduced to three heads. Those that fall under the third head will be remedied by the application of the *lex loci* to persons in the circumstances stated, by which questions relative to marriages contracted subsequently to their change of religion, and rights of inheritance depending on such marriages, and rights of inheritance generally to property possessed by such persons under titles not depending on Hindoo or Mahomedan law, will be determined.

The loss or total forfeiture of property to which a Hindoo or Mahomedan is liable by renouncing the religion of his father.

6. The grievances stated under the second head will be prevented by the provisions in section XII. of the draft Act in all the territories under the government of the East India Company, excepting the places within the local limits of the jurisdiction of Her Majesty's Supreme Courts; if similar provisions are enacted for those courts, the measure will be complete.

The coercion and cruelties to which persons under legal age may be subjected by parents or guardians in consequence of their changing their religion.

7. The possible grievances set forth under the first head will be prevented in some degree if the provisions in sections XI. and XII. are made the general law, as sons or daughters, under the circumstances supposed, will be secured in their right to maintenance from their fathers; and if they are at an age at which, by the law of England, they would be considered competent to exercise a discretion in the matter of religion, they will be entitled under the *lex loci* to claim such protection as the law of England affords against any coercion or oppression used to deter them from following their new religion.

8. In framing the code of substantive law, it will be an object to define the relative rights and duties of parents and children. At present the Law Commissioners are not prepared to offer any specific suggestions on the subject, and it does not appear to them that there is an urgent occasion for special legislation upon it.

I have, &c.
(signed) *J. C. C. Sutherland*,
Secretary.

Indian Law Commission,
22 May 1841.

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To the Right Honourable *George* Earl of *Auckland*, G.C.B. Governor-general of *India* in Council.

Legis. Cons. 8 July 1842. No. 17.

In compliance with the instructions of Government, conveyed to us in Mr. Secretary Maddock's letter of the 11th January last, we have now the honour to transmit a Draft Act, upon the principle of the four first recommendations of our Report of the 31st October 1840, in the form of an Appendix to that Report.

2. On the 10th ultimo, Mr. Secretary Maddock addressed a letter to our Secretary, transmitting a Memorial,—from the Reverend George Gogerly and other Missionaries, with two enclosures,—complaining of certain legal grievances for which they desire a remedy. Mr. Maddock's letter conveyed to us the wish of Government that we should consider the Memorial in connexion with the subject of the *lex loci* of India.

3. We have accordingly done so, and we think that the provisions of sections X., XI. and XII. will afford a remedy for the grievances complained of,—as far at least as such an object can be properly connected with the other purposes of this Act.

4. We submit the Draft, together with some explanatory notes we have appended to it, to the consideration of your Lordship in Council.

A. Amos.
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission, 22 May 1841.

Draft Act.

Legis. Cons. 8 July 1842. No. 18, Enclosure.

Whereas it is doubtful what is now the substantive (*a*) law of the place (*b*) in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Supreme Courts at Calcutta, Madras, and Bombay;

And whereas also a practice has grown up in the Courts of the East India Company, of administering to every person not being a Hindoo or Mahommedan, —in all cases not specially provided for,—the substantive law of the country of such person, or of the country of the ancestors of such person, whenever such substantive law is not inconsistent with equity and good conscience;

And whereas also it is lawful for aliens to hold lands in the said territories, and there is a great and increasing number of aliens in the said territories;

And whereas also the diversity of laws, which the said courts of the East India Company, according to the said practice, may have to administer, is likely to occasion great and increasing inconvenience and difficulty;

And whereas also there is in the said territories a great and increasing number of persons, whose legal connexion with their country or with the country of their ancestors is interrupted by illegitimacy, and it is doubtful whether the said practice is applicable to such persons;

And whereas also the said courts of the East India Company will, in the application of the said practice, have frequently to determine intricate questions of pedigree, before they can decide what law they are to administer;

And whereas also there is in the said territories a large number of Armenians, and it is doubtful what is the Armenian law;

And whereas also the English substantive law is the law of the place (*b*) in such parts of the territories subject to the government of the East India Company as are within the local jurisdiction of Her Majesty's Supreme Courts aforesaid, and it is expedient that the law of the place in the territories subject to the government of the East India Company within and without such jurisdictions should, as nearly as circumstances will permit, be the same;

And whereas also there is a large and increasing number of British subjects in the territories subject to the government of the East India Company, and it is lawful for such British subjects to hold lands therein, as well without as within the

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local jurisdiction of Her Majesty's Supreme Courts aforesaid; and the courts of the East India Company now administer English substantive law to such British subjects whenever such substantive law is not inconsistent with equity and good conscience, and it is expedient that they should continue to do so;

It is hereby enacted, that from and after the day of in the year 1841, the substantive law of the place in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Supreme Courts aforesaid, shall be so much of the substantive law of England as is applicable to the situation of the people of the said territories, and as is not inconsistent with any Regulation of the Codes of Bengal, Madras, or Bombay, or with any Act passed by the Council of India, or with this Act:

II. Provided, and it is hereby enacted, that nothing in this Act contained shall apply, so far as regards marriage, divorce, or adoption, to any person professing in good faith any religion other than the Christian religion.

III. Provided also, and it is hereby enacted, that nothing in this Act contained shall be construed to prevent any court from deciding any case according to any good and lawful (*c*) local custom.

IV. And whereas also it is held by Her Majesty's Supreme Courts at Calcutta, Madras, and Bombay, that (*d*) no Act of Parliament, which has been passed since the thirteenth year of his Majesty King George the First, extends to India, unless there be in such Act a special provision to that effect; and it is expedient, as aforesaid, that the substantive law of the place in the said territories, within and without the local jurisdiction of the last mentioned courts, should be, as nearly as circumstances will permit, the same;

It is therefore enacted, that no Act of Parliament, passed since the thirteenth year of King George the First, shall be held to be extended to any place in India by virtue of this Act, unless there be in such Act of Parliament a special provision for extending it to India.

V. And whereas no court of the East India Company is in respect of the administration of English law, a Court of Law, as distinguished from a Court of Equity and good Conscience; and doubts might arise in what way such courts ought to adjudicate the legal rights of the persons subject to the substantive law of the place enacted by this Act; and to modify such legal rights whenever equity and good conscience require; (*e*)

It is hereby enacted, that the said courts of the East India Company shall adjudicate such legal rights, and modify the same, whenever equity and good conscience require, in the same way in which the said courts of the East India Company now adjudicate and modify the legal rights of British subjects.

VI. And whereas it is not expedient that the distinctions, (*f*) known in English substantive law, between real property and personal property, should subsist in the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts aforesaid;

It is hereby enacted, that all immoveable property, situate within the territories subject to the government of the East India Company, and without the local jurisdiction of the said Supreme Courts, and every interest in immoveable property so situate, shall be regulated by the rules which regulate personal property according to the substantive law of England, and shall be adjudicated upon accordingly in all courts within the said territories, whether established by royal charter or otherwise.

VII. Provided, and it is hereby enacted, that nothing herein contained shall be construed to affect the distinction (*g*) recognised by the law of England, as well as by the law of other civilised nations, according to which succession to immoveable property of a person deceased, follows the law of the place where such property is situate, while succession to moveable property of a person deceased follows the law of the place of the domicile of such person.

VIII. And it is hereby enacted, that in all cases to be decided under this Act, an appeal shall lie from the decision of any of the courts of the East India Company to such one of the colleges of justice established by the Act of the Council of India, No. —— of 1841, as is situate in the same presidency as the court whose decision is appealed from, subject to such rules as are contained in that Act.

IX. And it is hereby enacted, that in every suit brought in any court of the East India Company, wherein the matter out of which the cause of action arose, shall have had place before the said day of 1841, the decision shall be according to the law or laws under which the parties shall appear to the court

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to have supposed themselves to be living, or according to equity and good conscience, following such law or laws.

X. And it is hereby enacted, that nothing in this Act contained shall apply to any Hindoo or Mahommedan, or to any property of any Hindoo or Mahommedan (*h*), unless such Hindoo or Mahommedan shall have renounced the Hindoo and Mahommedan religion (*i*).

XI. Provided that no Hindoo or Mahommedan shall by renouncing his religion lose any rights or property, or deprive any other person of any rights or property.

XII. And it is hereby enacted, that in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Courts aforesaid, so much of the Hindoo and Mahommedan law as inflicts forfeiture of property or rights upon any party renouncing either of those religions, is abrogated.

XIII. And it is hereby enacted, that nothing in this Act contained shall apply to the Court of the Recorder of Prince of (*k*) Wales' Island, Singapore, and Malacca (*l*).

Notes to the Draft Act.

(*a*) Substantive Law.

For two reasons we think it right to explain the sense in which we have used this expression.

First, because, though the expression has been used in treatises of jurisprudence and in official reports, it has not, we believe, been before used in legislation.

Second, because we believe the expression has been used, or at least understood, in a sense different from that which it is intended to bear in this Act.

It has been used or understood, we believe, as if it included the definitions of crimes; as if there were substantive criminal law, and substantive civil law; as if the only subject matter of the whole *corpus juris* excluded by it, were the rules of pleading, evidence, and procedure. When the expression is used in this sense, the rules of criminal pleading, evidence and procedure are considered as adjective to the penal code, or definitions of crimes, the penal code itself being considered, not as adjective to the civil code, but as substantive.

In this Act we intend the term to include only the definitions of rights and obligations; and we consider the definitions of civil injuries and the definitions of crimes as parts of adjective law.

This, we think, is clearly the correct import of the expression. The definitions of civil injuries and of crimes are evidently only necessary for preventing infractions of rights and obligations.

If we suppose every member of the community to have sufficient motives, independently of legal proceedings, to respect the rights of his neighbour and his own obligations, there would be no use in defining civil injuries or crimes; that is to say, definitions of civil injuries and of crimes are of no use, except as adjective to definitions of rights and obligations.

We have also the authority of the Fourth Report of the English Commissioners of Criminal Law for this use of the expression.

"It is in the first place material (they say) to advert generally to the relation which the criminal branch of the law bears to the whole system. Every system of municipal law consists necessarily of two distinct parts, which may be distinguished as substantive and adjective laws. The former comprehends the definition of civil rights and obligations; while it is the office of the latter to prevent the occurrence of certain grave infractions of such rights and obligations. And one mode of prevention, namely, the infliction of punishment on those who offend, in order, by example, to deter others from offending, constitutes the great principle on which the law respecting crimes and punishments is founded." p. 6.

(*b*) Law of the Place.

Lex loci. The Hindoo law and the Mahommedan law are properly the laws of persons belonging to the Hindoo and Mahommedan religions; they cannot therefore be considered as *lex loci*, in the sense in which English law is the *lex loci* of the Presidencies, although they are the laws of a vast majority of the inhabitants.

(*c*) Local Custom.

Besides local customs, there are in this country customs of families and customs of sects; but we believe there are no customs of any families, other than Hindoo or Mahommedan families, which are excepted from this Act by the general exception in section X.

With regard to customs of sects, the case of the Parsees is the only one we are aware of, concerning which there can be any doubt. But all that relates to marriage, divorce, or adoption,

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adoption, is excepted by section II., and we suppose there can scarcely be anything else which the Parsees would not be willing to sacrifice for the sake of having the law applicable to them the same in the mofussil as in the Presidencies.

Jains, Budhists and Seikhs are to be considered as Heterodox Hindoos.

(*d*) We wrote to the Judges of the Supreme Courts of Madras and Bombay to ascertain if this proposition is correct as to their Courts, and have been favoured with early answers. The answer of Sir Robert Comyn and Sir Edward Gambier shows that the proposition is correct as regards the Supreme Court of Madras. By Sir Henry Roper's answer, it seems that the question has never been decided at Bombay. From the evidence of Sir Ralph Rice, however, before the Select Committee of the House of Lords, 1830, it appears that the thirteenth year of king George the First has been considered at Bombay also, as the epoch at which English law was introduced by the establishment of the Mayor's Court.

We observe also in the Reports of Cases decided by the Sudder Dewanny Adawlut of Bombay, vol. 1, p. 333, that a case is cited by the Advocate-general from the *Courier* newspaper of the 30th January 1818, in which the learned Recorder of that day is made to say that "the first charter of justice might be said to be that of George I. in 1726, creating the Mayor's Court at each of the three Presidencies." Perhaps therefore the allegation in the preamble to this section may be considered sufficiently proved.

(*e*) Equity and good Conscience.

The mofussil courts as regards English law are not courts of law, but of equity.

They now administer to British subjects the same system which is administered by English courts of equity. See the case of Hoo *v.* Peter Marquis, Reports of the Sudder Dewanny Adawlut, vol. 4, p. 243.

But one very remarkable difference in their circumstances causes an equally remarkable difference in the mode in which they administer that system. They are courts administering English equity in a country in which there are no courts of English law. This is a vast advantage. A very great portion of the business of English courts of equity consists of attempts (not always, though generally effectual) to prevent or remedy the mischievous effects of proceedings in courts of law. Where there are no such courts this function has of course no existence. The mofussil courts have nothing to do but to administer equity, following law of course, but unembarrassed by the co-existence of courts of law, that is to say, to give to every suitor his legal rights when there is nothing inequitable in them,—when there is anything inequitable, then his legal rights modified and corrected by equity. Again, as every British subject who sues in the mofussil is seeking equity, he is obliged, according to the well known rule, to do equity as the price of obtaining it.

The effect of this Act will not be, to introduce any new system into the mofussil courts, but merely to extend to all persons who are not Hindoos or Mahommedans that system which is already administered to British subjects.

(*f*) Distinction between Real and Personal Property.

This, in the early stages of English law, would have been a very important change. But now every man may by that law dispose of his real property by will as he pleases. And by Mr. Fergusson's Act the real estates of British subjects in the Presidencies are liable for debts of all kinds. Practically therefore, this change will not be a great one, especially when we take into account the circumstance that all the mofussil courts are courts of equity, in which kind of courts the distinction between realty and personalty are not looked upon with favour.

We apprehend that the law of primogeniture as it now exists in England has not much direct operation, because the greater part of landed property is either in settlement or passes by will. It is probable, however, that the original law of primogeniture, excluding as it did any testamentary power, has still a considerable indirect effect through the feelings of landed proprietors. It probably induces them in their settlements and wills to make an eldest son, as it is commonly expressed.

The question agitated among political economists has been, whether a compulsory law of equal partition is beneficial or otherwise. We believe it has not been frequently urged that, so long as every man is left at liberty to divide his property as he pleases after his death, the national welfare requires that, in the event of his making no provision, the principle of primogeniture should prevail.

Whether, in a country where the power to settle and devise real property exists, the feeling in favour of primogeniture, or something approaching to primogeniture, with its effect upon wills and settlements, is beneficial or not,—is a question too wide to be discussed in this note. Nor is such a discussion necessary for the present purpose; because the feeling does not exist with regard to the real property of Englishmen in India, and assuredly could not be created in such circumstances by merely permitting the remnant of the ancient English law of primogeniture to continue in existence. The existence of that remnant, therefore, surely holds out no prospect of advantage, equivalent to that of having one simple and uniform law of succession for all kinds of property.

There is one distinction between moveable and immoveable property, which we believe is in practice observed in the mofussil, and which we think ought to have the sanction of law. We mean the distinction introduced into English law by the Statute of Frauds, which makes writing

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writing and signature necessary to a conveyance of real property. But we think a provision to this effect will more properly form the subject of a separate Act than of an exception to this section.

(*g*) It cannot be denied that, by the recognition of this distinction, the difficult question of domicile will frequently arise for decision in the mofussil courts, and also that those courts will frequently have to inquire what is the law of the domicile of a deceased person, in respect of succession to moveable property. These difficulties, however, cannot be removed without making British India an exception in this respect to other British possessions, and perhaps to the whole civilised world; and, even if we thought it advisable to propose the abolition of the distinction, we should doubt whether any Legislature, except the Imperial Parliament, could with perfect propriety alter a part of the law which seems to have a near relation to the *comitas inter gentes*.

When we come to the codes of substantive law we shall go fully into this subject, and consider how far we can, consistently with a due respect to the general practice of nations, relieve the courts of this country from the necessity of applying any other law than that of the place.

(*h*) The right of Hindoos and Mahommedans to have Hindoo and Mahommedan law administered to them is limited, both in the Presidencies and in the mofussil; but the limitation is not the same in the two cases. Neither is the law administered to these two classes, in cases where they are not entitled to their own laws, the same (practically at least) in the Presidencies and in the mofussil.

When we are making the three codes of substantive law, which appear to be required for the three great classes of which the population of this Indian Empire consists, viz. Hindoos, Mahommedans, and persons who are neither Hindoos nor Mahommedans, it is to be hoped that we may find it possible to give to the two former classes the same law, in the cases in which Hindoo and Mahommedan law are not now specially reserved to them, or may not continue to be specially reserved to them, as that to which the last class will be subject in such cases. It is also to be hoped, or rather it is not to be doubted, that we shall be able to provide that the legal condition of each of the three classes shall be the same respectively in the Presidencies and in the mofussil.

This Act, however, is intended for the last class only, and any provisions affecting the other two would be out of place in it.

(*i*) According to the view expressed in note (*b*), these persons no longer professing the Hindoo and Mahommedan religions, the Hindoo and Mahommedan laws will not be applicable to them respectively. They will become properly subject to the *lex loci*. It is necessary however to provide against any loss of rights to them, or to any other persons through them, by this change of law. This is done by section XI.

But besides the change from Hindoo and Mahommedan law to the *lex loci* which owes its origin to this Act, there is a loss of rights consequent upon renunciation of the Hindoo and Mahommedan religions, by the operation of the two systems of law belonging respectively to those religions. It was to prevent this loss of rights that Section IX. Regulation VII. of 1832 of the Bengal Code was enacted. Section XII. of this Act will make the law uniform on this point, throughout the territories under the government of the East India Company, except within the limits of the local jurisdiction of Her Majesty's Supreme Courts. We think it ought to be the same within those limits, but to make it so does not fall within the scope of this Act.

(*k*) The whole of the Settlements in the Straits being subject to the law which is administered by the Recorder's Court, there is no room for the application of this Act to those Settlements.

(*l*) We at first thought of extending, by a general provision in this Act, all the Acts of the Council of India which have extended the provisions of Acts of Parliament to any parts of India, or to any persons in India. But having looked through those Acts, we believe it will be a more expedient course to make separate and special provision for that purpose.

MINUTE by the Honourable *A. Amos*, dated the 25th April 1842.

Legis. Cons. 8 July 1842. No. 19. Lex Loci.

THESE papers have been detained for a long time by Lord Auckland, in consequence, I presume, of the extremely important and urgent matters which engrossed his attention. It is scarcely to be expected that Lord Ellenborough can, for some months at least, find time to consider and write upon the subject.

I incline to think that we should send the papers home directly; but it would be advisable to accompany them with some general remarks of our own. Perhaps we can say that, as regards East Indians Portuguese and others of European origin or descent, and perhaps Armenians, if they are desirous of the change, we think that the suggestions of the Commission are salutary, but we entertain doubts as to the prudence of the change as regards other classes; and that we are not to be understood as adopting the opinions of the Commission as to what, in the absence of any new provision, is the actual *lex loci* of the country; and under the present circumstances of the country, we think it most prudent not to

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publish the draft Act, especially without consulting the Governor-general, who would probably not like to give an opinion on the subject without examining it more at leisure than he can be expected to do at present.

(signed) *A. Amos.*

Leg. Cons. 8 July 1842. No. 20. Lex Loci.

MINUTE by the Honourable *H. T. Prinsep*, dated the 29th April 1842.

I AM sorry I cannot agree to the principles on which the propositions of the Law Commission in regard to the *lex loci* of India are based.

The Commission state it to be doubtful what is the substantive civil law to which parties not being natives of Great Britain, and not Hindoo or Mussulman, are subject, and add that a practice has grown up in the courts of the East India Company of administering their own law to such persons.

Now this seems to me to be an erroneous basis on which to found any law upon this subject, for it is a well known and fully recognised principle in all eastern countries, from China even to Smyrna and Constantinople, that foreigners, denizens Timmees (*i. e.* submitting enemies) and licensed residents of all kinds, if not Mahomedan or of the religion of the country, shall bring with them for all domestic transactions their own customs and laws, including their own rites of marriage and rules of inheritance.

Our courts, instead of being chargeable with allowing a new practice to grow silently up to this point, have only recognised and acted upon the law they found in force, that is, the law applied to Europeans when they were mere licensed settlers and traders residing under sufferance in the ports and cities of India.

The law of England, which is much less liberal on this point, is based on principles that can never, I conceive, be extended to Asiatics, and its origin will not bear close investigation; I cannot consent therefore to recommend to the Home Authorities the adoption of such a law as that recommended by the Law Commssion, which, beginning with a declaration that it has hitherto been doubtful what was the law of India in respect to foreigners, and that in consequence of such doubts an erroneous practice had grown up, proceeds broadly to lay down that henceforward all foreigners, Asiatic as well as European, shall in all matters of inheritance be dealt with according to the law of England, modified only by the removal of the distinctions between real and personal estate.

But though I disapprove of the basis of this law, as it is now drafted, I am fully sensible of the disadvantages that arise from uncertainty, and of the necessity of prescribing what the law and practice shall hereafter be, more especially in cases where no special law is alleged and established as that recognised by the family of the deceased. Although, therefore, I would not hastily abrogate the recognised and well understood principle which allows to foreign settlers the privilege of handing down their property to their posterity according to the law of their nation and sect, I should have no objection to allowing to English law such a preference as should leave it to be the law of distribution whenever another special law is not pleaded and put in evidence.

This will allow Armenians and Christians of the half race, and any other class that pleases to take the benefit of English law, and so the Portuguese and other European foreigners, unless these latter lay claim to their own law, which assuredly they have as much right to do in respect to their estates in the interior, some of which are very ancient, as we English have in respect to the estates our ancestors acquired at the same early period.

I object to the terms of sections X. XI. and XII. of the Law Commissioners' draft of law.

In section X. it is provided that the Act is not to apply to any Hindoo or Mahomedan, or to the estates and property of such, "unless such Hindoo or Mahomedan shall have renounced his religion," implying that upon renunciation, his estate is to be administered to according to English law.

Section XI. provides that no one by renouncing is to acquire or deprive others of any rights of property.

Such a law as this would, as it seems to me, leave things in a strange confusion. *A*, a Hindoo, has turned Christian. His wife is still Hindoo, or may be Christian likewise. His estate, however, is to go by English law, and he may will it away

to

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to the prejudice of both widow and brothers. If he dies intestate, the administration is still to be taken out by the widow, being a Hindoo, as heir of a Christian and British subject, and the family have thus to receive a strange law of which they are quite ignorant.

I would leave out both these sections, if the Act be ever passed, as imperfect and impossible of application, besides being calculated to do much mischief, by exciting apprehension that they are preparatory to an attempt to produce extensively the status for which the Government thus deems it necessary to legislate.

I have no objection to section XII. standing, provided the word "abrogated" be changed for "shall not be enforced by any British court."

We cannot pretend to abrogate what is matter of religious belief, and supposed to have revelation for its origin.

I would here remark, that if whatever calls itself Hindoo or Moosulman is to be left *in statu* so far as concerns the law of inheritance, &c. very little will be done to simplify the question of substantive *lex loci*, for the special customs of Goosaines, Jains, and all the various heterodox castes and races of India come within the word Hindoo, and the law of inheritance to them is not the law of Menu, nor the Metacshara and Dyabhaga, but their own special customs, as proved in evidence.

In like manner there are many varieties of Mahomedan law, and the Sheeas, Malikees and others claim always, and have been allowed to have their estates descend and be administered to according to their special doctrines.

Even supposing, therefore, the draft of Act proposed by the Law Commissioners to be made law, the courts administering it will have to take evidence in regard to special customs, and be in the same uncertainty as to what law is to be applied to the particular Hindoo and Mahomedan estate before them, as they are now under the universally recognised principle of Asia, which respects the laws and customs of the settler of whatever race he may be, and allows the claims of inheritance to his estate to be preferred and decree of distribution to be made under that law.

In order to make their law more complete, the Law Commissioners ought, as it strikes me, to have laid down in respect to Mahomedans, that the Soonee law of Uboo Humcefa and his school should be the substantive law for Mahomedans, unless the fact of a difference of sect and other specific known law be established in respect to the deceased.

And so in respect to Hindoos the law of Mienu, with specification of the tract in which the Mitholo varieties are to be the rule. This principle in respect to these two great classes would be quite consistent with the further provision, that for strangers the English law should be the rule, when other special law of the deceased might not be pleaded and proved.

We are not going to pass this law at present, or I should deem it necessary to go more in detail into this subject.

I cannot, however, let it be sent home to be submitted eventually to Parliament without some protest against the principle which has been adopted in its preparation, which takes no account whatever of the recognised practice of Asia in respect to the estates of aliens, which I regard as a substantive law already established for them, and acted upon as such in all the courts of India.

(signed) *H. T. Prinsep.*

MINUTE by the Honourable *A. Amos*, dated the 2d May 1842; and Note by the Honourable the President, dated 7th July 1842.

Legis. Cons. 8 July 1842. No. 21.

Lex Loci.

I DO not think it necessary, for the purpose of legislation, to come to a decision whether we are satisfied with the theory of the Law Commission, that British law is the *lex loci* of India, or with that of Mr. Prinsep in favour of a custom of Asia. We have before us a practice pretty clearly established, at least for the mofussil courts, which is consonant to the alleged *lex Asiatica*. That practice is attended with great uncertainty and inconvenience, especially where a preliminary question is doubtful, viz., as to what the law of the individual must be deemed to be; a question not depending on domicile, but involving inquiries of pedigree and legitimacy, besides many points of law which are by no means settled.

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The inconveniences of the existing practice being manifest, it becomes a subject of consideration how far it is expedient to remedy them by the introduction of the British law? Such a measure would remedy the inconveniences which attend the present system; but unless the British law be introduced with exceptions and qualifications, it would entail far greater evils than those which it would remedy.

The Law Commission have accordingly admitted that in no case can the whole code of English law be made applicable to any class of persons in the mofussil; the more complicated provisions of that code must be excepted. Again, upon certain matters which have, in some measure, a religious aspect, such as marriage, the Law Commission do not propose to interfere. They think it would be imprudent also to interfere with Mahomedans and Hindoos, whether orthodox or heterodox.

Discussions on the subject have taken place in Council. I collected that it was the general opinion that in the cases of East Indians and descendants of Portuguese, in which so much difficulty arises as to determining what is the law of the individual, the proposed Act drafted by the Law Commission would be highly beneficial. With regard to Armenians the difficulty is of another kind, viz., assuming that the law of the individual is that of Armenian customs; what are those customs? As the Armenians appear to be desirous of being relieved from the uncertainties attending their own customs, I did not collect that (if their wishes were clearly ascertained) there would be any reluctance on the part of the Council to extending the Act to this class of persons.

As regards all other European foreigners, I think there are many reasons for including them, and I do not see that they can complain of being subject to the same law by which they would be bound if they went to England or another English colony, especially after becoming domiciled. This indeed is agreeable to the general custom of Europe, especially as regards the transmission of immoveable property.

But there are other classes of persons in India, permanently or transiently residing there, who are neither of European origin, nor Armenians, Mahomedan, or Hindoos, even in the most extensive application of the two latter appellations. I do not suppose that we should be desirous of interfering with the usages of the Parsees, unless at their own desire; but, independently of this sect, I doubt whether it would be expedient to make further exceptions. However, as much difference of opinion prevails on this subject, I think the consideration of these cases may well be postponed so as not to impede the attainment of great benefits by extensive classes of the community, who in various cases do not know what law they are subject to, and in others, or sometimes the same, are said to be governed by laws, the provisions of which no one can define with accuracy.

There is, no doubt, much difficulty and delicacy in the question, where Hindoos or Mahomedans turn Christians; but I think the principle ought to be that they may become subject to British law, but that this shall not prejudice any vested rights in other Hindoos or Mahomedans.

(signed) *A. Amos.*

Note by the Honourable the President in Council.

THERE is so much difficulty and delicacy in this question, and it bears upon the interests of so many classes of persons, that it would be dangerous, I think, to legislate until opinions are less divided on the subject. In the meantime, it might be as well to ascertain the sentiments of the Governor-general, and to solicit the opinions of the subordinate governments, none of whom have yet been afforded the opportunity of taking a part in the discussion.

7 July 1842. (signed) *W. W. Bird.*

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From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to the Chief Secretaries to the Governments of Fort St. George (No. 157), and Bombay (No. 158), and Secretary to the Government of the North-West Provinces (No. 159).

Legis. Cons.
8 July 1842.
No. 22.

Sir,

In a letter, No. ——, from this department, dated the 31st May 1841, copies of a Report of the Law Commissioners, dated 31st October 1840, on the substantive law to which all persons in the mofussil, not subject to Hindoo or Mahomedan civil law, should be subject, were forwarded for submission to the . I am now desired to state for the information of , that as the subject discussed in that Report relates to a matter of general importance, the Honourable the President in Council is desirous of receiving the opinion of as well as, through the government, the opinions of the judges of the Sudder Court, and of officers of judgment and experience in the Presidency of .

Legis. Depart.

Madras.	Bombay.	N. W. Prov.
No. 63	64	65
15	12	12

2. The Law Commissioners, agreeably to the request of the Supreme Government, prepared and submitted a draft Act upon the principle of their first four recommendations; copies of that Act accompany this communication for similar opinions.

M.	B.	N.W.P.
15	12	12

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Fort William, 8 July 1842.

(No. 57.)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Legis. Cons.
8 July 1842.
No. 23.

Sir,

On the 28th May 1841, 12 copies of a Report of the Law Commissioners, dated 31st October 1840, on the substantive law to which all persons in the mofussil, not subject to Hindoo or Mahomedan civil law, should be subject, were forwarded to you. I am now desired to state, for the information of the Honourable the Deputy-governor of Bengal, that as the subject discussed in that Report relates to a matter of general importance, the Honourable the President in Council is desirous of receiving the opinion of his Honor, as well as, through him, the opinions of the judges of the Sudder Court, and of officers of judgment and experience in the Presidency of Bengal.

Legis. Depart.

2. The Law Commissioners, agreeably to the request of the Supreme Government, prepared and submitted a draft Act upon the principle of their first four recommendations; 12 copies of that Act accompany this communication for similar opinions.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Fort William, 8 July 1842.

— No. 8. —

SALE IN EXECUTION OF DECREES OF CIVIL COURTS.

No. 8.
Sale in Execution of Decrees of Civil Courts.

(No. 1154.)

Legis. Cons. 20 March 1841. No. 1.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Judicial Department.

Sir,

Judicial Dep.

I AM directed by the Right honourable the Governor of Bengal to forward for submission to the Supreme Government, an original letter from the register of the Sudder Dewanny Adawlut, No. 3579, of 20th December 1839, and one from the secretary to the Sudder Board of Revenue, No. 52, of the 4th of February last, on the subject of the draft Act forwarded with Mr. J. P. Grant's letter, No. 465, of 11th November 1839, for modifying section 2, Regulation XLV. 1793, by doing away with the necessity of the furnishing, by courts of justice to commissioners of revenue, of translations of decrees for the sale of lands in execution of awards of court.

2. At the same time, as connected with the same subject, his Lordship has directed me to transmit to you a letter from the register of the Sudder Dewanny Adawlut, No. 1877, of the 5th instant, explaining a difference of opinion between the Sudder Courts of Calcutta and Allahabad, regarding the respective powers of judicial and revenue authorities over sales effected by collectors for realisation of decrees of the courts.

3. It was stated in Mr. Grant's letter referred to, in the first paragraph, that the honourable the President in Council was not prepared to pass the law recommended by the Sudder Court, by a part of the Sudder Board, and by the Bengal Government, for transferring to the judicial from the revenue authorities the duty of selling lands in execution of judicial decrees. And it was intimated by his Honor in Council, that nothing further was needed to remove the practical inconveniences which had given rise to the proposition, but to pass a law for doing away with the necessity of the courts furnishing to commissioners of revenue translations of such of their decrees as direct lands to be sold.

4. The letter of the Sudder Board, and the latest letter from the Sudder Court, will satisfy his Lordship in Council that the furnishing of translations was not the only practical inconvenience requiring remedy, and a reference to the former correspondence on the subject now resubmitted, will show that the discussions really arose out of the very circumstances now again brought forward by the Court and Board; viz. 1st, the power over sales for decrees of court disputed between the revenue and judicial authorities; and 2d, the doubt as to the meaning of the expression "small portions of lakheraj land," used in section 3, Regulation VII. 1825, to fix the limit beyond which judges may not use other agency than that of the collectors to effect sales of land in execution of their decrees.

5. But a re-consideration of the points of former discussion, rendered necessary by these later letters from the Court and the Board, has induced his Lordship to wish that the present opportunity should be taken, since a part of the subject must, in consequence of these letters, again come before the Supreme Government, of resubmitting to the notice of the Governor-general in Council the entire proposition of the Bengal Government, to which in November last the Supreme Government hesitated to accede, but which his Lordship is yet disposed to think may, on re-examination, be found not unworthy of adoption.

6. The proposition is shortly this: That collectors should no longer be the agents of judges for the sales of lands in execution of decrees, but that the judges should cause such sales to be effected by their own subordinates.

7. There is obviously no peculiar fitness in a collector for this kind of agency; he is not subordinate to the judge, and not always at the same place with that functionary;

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Sale in Execution of Decrees of Civil Courts.

functionary; he is subordinate to another functionary, the commissioner of revenue; and, as a representative of the pecuniary interests of Government, he may sometimes be indisposed, occasionally even unfit, to conduct, as agent for the judge, a portion of the money concerns of individuals.

8. The reasons which induced the legislature in 1793 to place this agency in the hands of the collectors were peculiar. It was then the practice to sell distinct portions of estates to realise awards of court; each sale included a butwarrah, and affected the assessment and the permanency of the government jumma. It was indispensable, therefore, to give the chief charge of such operations into the hands of the collectors; and this necessity was expressly assigned by the preamble to Regulation XLV. 1793, in the following words: "In cases in which portions of estates may be ordered to be sold in satisfaction of decrees of the courts of judicature, it is necessary for the security of the public revenue that the jumma to be charged on the lands directed to be disposed of, should be adjusted agreeably to the principles prescribed in section 10, Regulation I. 1793. The Board of Revenue and the collectors being in possession of the accounts and information necessary for the adjustment of the jumma, and as the superintending the details of the attachment and sale of lands would necessarily occupy much of the time of the courts, and often occasion a delay in the enforcement of the decree, and it being necessary that Government should have the means of compelling the proprietors to furnish the requisite accounts and information for enabling the public officers to apportion the jumma, and that the courts by which the decrees may have been passed, or to which the enforcing of them may be committed, should be vested with a power of countermanding or postponing the sale, in the event of the amount of the decree being discharged previous to the sale being made, or for other cause that may appear to them sufficient, the following rules have been accordingly enacted."

9. Further, it was a provision of the law above quoted, that unless otherwise stipulated, all arrears of revenue other than those of the year in which the sale was held, should be paid to Government from the proceeds of sale. In practice, the stipulation was never made; and it was, therefore, for this second reason, necessary that the sales should be held by collectors, in order to ensure the realising by Government of all arrears of revenue out of the proceeds of each transaction.

10. Of these two special reasons for the use of an agency not otherwise fitted for the purpose, one no longer exists. It is never now the practice to sell distinct portions of land in realisation of awards of court; but to sell "the right, title, and interest of the debtor" (whatever that may be) in the estate named in the advertisement. This kind of sale causes no butwarrah, or new allotment of jumma, and has no effect whatever upon the interest of Government in the assessment of the land revenue; so far then as concerns the reasons assigned by the preamble to Regulation XLV. 1793, there is no longer any necessity for the agency of the collector.

11. The other special reason still exists; the collector is still in the habit of deducting from the purchase-money the amount of arrears of revenue due from the estate to Government.

12. Upon this unnecessary, if not mischievous practice, his Lordship's opinion was thus expressed to the Sudder Board, in a letter dated 13th June 1837:

"As his Lordship sees insuperable objections to the principle of such a plan, he need not examine in detail the mode in which it is proposed to carry it into execution; for he cannot perceive that sales by a judge (whether mediately or immediately) in execution of his awards, have any necessary connexion with either the revenue or the revenue authorities. The sale of property under judicial decrees seems to be (with certain exceptions, which will be noticed in the sequel), as far as the revenue authorities are concerned, a mere private transaction, and the Governor is not aware that there is any argument, sound in reason or equity, justifying interference in this case, which would not be equally valid in regard to all transfers. The real end of all the forms and safeguards alleged to be necessary is, his Lordship apprehends, to enable the collector to appropriate a portion, or the whole, of the purchase-money to the liquidation of the Government revenue, if any be due; and this proceeding appears to be not only inconsistent with justice, but unnecessary for the object contemplated.

"When *A* sues *B* in the civil court to recover possession of an estate, and obtains a decree, and with it the property, the revenue authorities are under no

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apprehension in regard to the Government revenue. They know that the security for the revenue is the estate itself, and that all parties are well aware of the lien; yet, the property has changed hands in the same way as if it had been sold by auction under an award of court. Strictly speaking, the cases are the same. In the one case the civil court transfers *B*'s estate to *A*; in the other, the estate is in point of fact transferred to *A*, and immediately sold by him to *C* for the discharge of the debt of *B*. The transaction is not altered because *A*, instead of selling the estate himself, in order to liquidate his debt, procures it to be sold through the medium of the judge. There is no reason, therefore, why any distinction should be made between the two cases. The sale consequent on an award of court should be looked upon as a private transaction; because *B* would not sell his estate to pay his debt to *A*, the judge inrerposes, and sells it for him. But if *B* had himself sold his estate and paid *A*, the collector would have had no reason to interfere. His Lordship does not see why the collector should interfere because the medium of sale is altered.

"If then a sale of this description be precisely the same as a private sale, and the duty of conducting it be entrusted to the judge, he will always inquire, as he now does, whether the debtor is in possession of the property declared by the creditor to belong to him; having received from the collector such information as his registers supply, the judge will proceed to sell 'the rights and interests' of the debtor in the property described. As soon as the sale is complete, he will inform the collector of the change of names, so as to enable that officer to register the name of the purchaser in the place of that of the debtor. If the debtor's name had not been previously registered, there will be no need to register that of the purchaser.

15. "As to the purchase-money, the judge will of course pay over to the holder of the decree the amount of his award, and will either return the residue to the debtor, or dispose of it as to him may appear just and proper.

"Arrangements might easily be made for notifying to the assemblage at the time of sale both the principle that the purchaser of a khalsa estate enters at once upon all liabilities of the seller, in relation to Government, and with respect to that particular mehal, and the fact of the precise amount of balance due from the whole estate, leaving purchasers to ascertain shares; but when once the principle was understood, both precautions might be omitted, as intending purchasers would satisfy themselves upon the latter score, as a matter of course, exactly as with regard to any other circumstances affecting the value of the property, and would regulate their bids accordingly.

"This plan, under which the sales of an estate for balances of revenue, and the sales of the rights and interests of individuals in an estate in execution of a decree of court, would be kept, as they ought to be, entirely distinct, appears to his Lordship to be infinitely preferable to the practice which is understood frequently to obtain, and which is fraught with injustice, of applying the proceeds of a sale of the latter description to the liquidation, in the first instance, of the revenue due from the mehal sold, and of handing over the balance only to the holder of the decree.

"By this course, in every case but the very rare one when the individual against whom execution has issued is the sole proprietor of the estate sold, great injustice is done to both parties. The balance due from the whole estate is made to fall upon one coparcener, and where the difference is not sufficient to satisfy the demand of the decree holder, he is driven to a further process for the recovery of the remainder of his debt, or loses it altogether. Under the system proposed by his Lordship, of putting up the rights and interests of the debtor burthened with his share of the unliquidated public demand, the creditor may expect to get exactly what the property of his debtor, subject to that prior lien, is worth. By the other plan, he only receives the difference between that value and the lien of Government on the whole estate.

"The law certainly warrants the proceeding objected to, because each sharer in a joint undivided estate is strictly answerable for the whole balance; and the necessity of the case, coupled with the consideration that any coparcener may at any time apply for a butwarra, justifies the rule. But there can be no good reason for acting upon it, to a breach of equity, when by a sale of rights and interests, subject to the Government demand, the safety of the public revenue might be abundantly secured."

13. It would seem then that there is but one apparent reason for the employment

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ment of this agency, and that this one reason is a bad one, or rather, when properly examined, a reason for abandoning the agency altogether.

14. It may be said, that the chief inconvenience of the present system is in the appropriation by government of the proceeds of sale in payment of its own revenue, and that this might be prohibited, and sale proceeds invariably remitted intact of the civil court, without doing away with the agency of the collectors.

15. Undoubtedly, his Lordship observes, this might be done, and the change would be productive of good. But if so much be done and nothing be left to the collector but the mere agency, there are several reasons for believing that the measure should be completed by removing from collectors the agency also. It would seem more convenient to the judicial functionaries to cause execution of their decrees by an agency wholly subordinate and responsible to themselves, and acting under their own eyes, than by an officer very little if at all responsible to them, and acting often at a distance, under a system of checks belonging to another branch of the public service, and little known to the judicial officers. It would seem unnecessary to take up the time of a collector with a business rendered merely mechanical, and therefore it may be supposed distasteful to him and perhaps in some degree unbecoming his position; and lastly, it will be always difficult for the people, perhaps even for the collectors themselves, to distinguish accurately between the powers and functions with which they are invested when selling lands for arrears of revenue and those which appertain to them as sellers of land by order of zillah judges; yet it is highly important both for buyers and sellers, that this distinction, which would carry with it weighty consequences, should be properly understood.

16. It appears clear, therefore, to the governor of Bengal that the right of appropriating purchase-money to payment of revenue being, for the reasons already given, removed from the hands of the collector, the agency should properly cease, and that the judicial functionaries should be allowed to effect sales through the medium of their own subordinates. A sudder ameen, acting under a judge's order, might, his Lordship thinks, conduct such sales with perfect propriety under simple rules to be laid down by the Sudder Court, and subject to the immediate control of the zillah judge, and if (which does not seem to be the case) the judges have less facility than necessary in obtaining proper information from collectors, the remedy can at once be supplied by the executive government.

17. All that seems necessary of a legislative nature to effect the alteration desired is in the draft* last submitted by the Sudder Court, of which a copy is for facility of reference appended to this despatch; and it will be observed that this draft provides effectually for the difficulties upon which the Sudder Courts of Calcutta and Allahabad are now understood to be at variance as well as for all the points alluded to as yet unsettled, in the letter of the Sudder Board of Revenue of 4th February last.

* *See* letter from the Register Sudder Dewanny Adawlut, No. 1914, dated 19th July 1839.

18. The power of making judicial sales would be taken from the revenue department, where it ought not to be, and given to the judicial, where it ought to be; and the right of interfering with the purchase-money would be taken away from government; such sales would become in practice what they are in theory, mere private transactions, enforced by the civil courts; and all the petty details would be arranged by the Sudder Court according to experience, and would always be under the check of the controlling executive government.

I have, &c.
(signed) *F. J. Halliday*,
Sec^{y} to the Gov^{t} of Bengal.

Fort William,
30 June 1840.

Copy of Draft Act appended to the Sudder Court's Letter, No. 1914, of the 19th July 1839.

Be it enacted, that from the such parts of Regulation XLV. of 1793, Regulation XX. 1795, Regulation XXVI. of 1803, and VII. of 1825, of the Bengal Code, and of any other Regulation or Act in force as relate to the sale by collectors of landed property of any description in satisfaction of decrees of the courts of civil judicature, or in execution of any other judical process, be repealed.

II. Be it enacted, that the courts of civil judicature within the territories subject to the presidency of Fort William in Bengal, shall be empowered to sell or to cause

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cause to be sold lands of every description, in execution of any decree or judicial process, in virtue of which such sales may be authorised by the Regulations or Acts now in force or which may hereafter be enacted.

(signed) *J. Hawkins*, Register.

Judicial Department, 30 June 1840.

(A true copy.)

(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

Legis. Cons. 29 March 1841. No. 2.
Enclosure.

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. R. Barwell, W. Braddon, Esqrs. Judges, and N. J. Halhed, Esq. Officiating Judge.

(No. 629.)

From *J. F. M. Reid*, Esq. Register, Fort William, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal.

Sir,

I AM directed by the court to forward to you the accompanying copies of correspondence, as per margin*, and to request that you will lay the same before the Right honourable the Governor of Bengal.

2. The court concur in the opinion expressed by the Court of Sudder Dewanny Adawlut for the Agra presidency, in the concluding paragraph of their register's letter, and beg to suggest that an Act be passed, defining the extent to which it is intended that the term "small portions of land held exempt from the public assessment," in the provisions of Regulation VII. 1825, shall be applicable.

I am, &c.

Fort William,
18 March 1836.

(signed) *J. F. M. Reid*,
Register.

Abstract.

Par. 1. Submitting correspondence noted in the margin.

Par. 2. Concurring in the opinion of the Agra court, and suggesting that an Act be passed defining the extent to which the term, "small portion of land held exempt from the public assessment" shall be applicable.

Court's reply of 28th Nov. sufficient in declaring the right of a ryot in his jote jumma liable to sale in satisfaction of a decree;
but incomplete in regard to the want of explanation whether the duty should be performed by judge or collector.

(Copies.—No. 1.)

From *E. J. Harington*, Esq. Officiating Judge, Hooghly, to *J. F. M. Reid*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

I HAVE the honour to state that the reply contained in your letter of the 28th November last is sufficient, inasmuch as it acquaints me that the court has ruled that the right and interest of a ryot in his jote jumma may be sold in satisfaction of a decree, but is incomplete in the omission of information whether the sale can be legally conducted by the judge and his officers, or that the duty must on all occasions be performed by the collector, without reference to the extent of the tenure liable to sale.

Predecessors conceive that they were authorised to empower their officers to sell as follows:
Principal Sudder Ameen:
25 beegahs lakheraj.
50 jumaee.
Sudder Ameen;
10 beegahs lakheraj.
25 jumaee.
Moonsiffs:
5 beegahs lakheraj.
10 jumaee.

2. The construction placed upon the regulations by my predecessors, evinced by their proceedings, which accompanied my former letter, has authorised them to direct and empower the officers of their court to sell lakheraj and jumaee lands to a certain regulated extent; and the practice which I found to be established and observed on assuming charge of this office, consisted in the sale of lakheraj land to the extent of 25 beegahs, and of jumaee lands to the extent of 50 beegahs, by the principal sudder ameen, in execution of the decrees of his own court, without direct

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* Letter from Officiating Judge of Hooghly, dated 6th January 1835, No. 1.
„ to ditto, dated 23d January 1835, No. 313.
„ from ditto, dated 30th December 1835, No. 284 and its Enclosures.
„ to the Register of the Court of Sudder Dewanny Adawlut for the Agra presidency, dated 22d January 1836, No. 182.
„ from ditto, dated 12th ultimo, No. 168.

direct reference to the judge. The sudder ameens were similarly empowered in regard to the sale of lakheraj lands to the extent of 10 beegahs, and of jumaee lands to the extent of 25 beegahs; the moonsiffs to the extent of five beegahs of lakheraj lands and 10 beegahs of jumaee lands; and the nazir had similar authority to dispose of lakheraj lands to the extent of 10 beegahs, and jumaee lands to the extent of 25 beegahs, in realization of sums of money adjudged by this court. An instance has occurred of jumaee lands to the extent of 102 beegahs being sold by the nazir, under the order of the judge, in satisfaction of a decree for 102 rupees; and in another case lakheraj land to the extent of 94 beegahs was similarly disposed of, under the same circumstances, for 3,401 rupees.

Nazir: 10 beegahs lakheraj. 25 jumaee.

Instances of sale by Nazir under order of judge: 102 beegahs jumaee land for 102 rupees; 94 beegahs lakheraj for 3,401 rupees.

3. I have the honour to solicit the instruction of the court with regard to the continuance or discontinuance of the above procedure and general practice.

Court's orders requested.

I have, &c.

Zillah Hooghly, 6 January 1835. (signed) *E. J. Harington*, Officiating Judge.

(No. 313.)

Sudder Dewanny Adawlut. Present: R. H. Rattray, H. Shakespear, W. Braddon, and J. C. Robertson, Esqrs. Judges.

From *J. F. M. Reid*, Esq. Register, Fort William, to the Officiating Judge of Zillah Hooghly.

Sir,

I AM directed by the court to acknowledge the receipt of your letter of the 6th instant, No. 1, and in reply to observe, that clause 2, section 2, Regulation VII. of 1825 defines the property which may be brought to sale by nazirs (independent of the collector), and to request that you will strictly conform to that rule, and direct the courts subordinate to you to do so likewise.

Directing strict adherence to the rule laid down in Sect. 2, Reg. VII. of 1825.

I am, &c.

Fort William, 23 January 1835. (signed) *J. F. M. Reid*, Register.

(No. 284.)

From *E. J. Harington*, Esq. Officiating Judge, Zillah Hooghly, to *J. F. M. Reid*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

THE execution of a decree requiring recourse to the sale of 32 beegahs of land, comprised in two separate portions, consisting of 21 and 11 beegahs, I addressed the commissioner on the subject. His opinion and construction of the Regulations are embodied in the enclosed copy of a letter which I have the honour to transmit to you, in order that they may be considered by the Court of Sudder Dewanny Adawlut, and that instructions may be addressed to me on the subject.

The orders of the Sudder Court, dated 23d January last, in reply to my letter of the 6th of that month, relative to the procedure of the courts of this district generally, in regard to the sale of landed property in execution of decrees, had impressed me with the belief, by which my conduct has since been regulated, that in their opinion, Regulation VII. of 1825 did not uphold the practice formerly observed in this district, of selling, through the agency of judicial officers, the extents of land which were specified in my letter, and that the intervention of the revenue authorities, by whom sales of landed property can be conducted in the most public and satisfactory manner, with reference to the protection of all interests concerned, would be indispensable on every occasion when the disposal of an extent of land exceeding five or ten beegahs, on which houses, orchards, &c. might be situated, whether subject to or exempt from the payment of revenue, or any portion of land equally limited, being exempt from revenue, should become necessary in execution of decrees of court.

I have, &c.

Zillah Hooghly, 30 December 1835. (signed) *E. J. Harington*, Officiating Judge.

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(No. 1418.)

From *E. M. Gordon*, Esq. Officiating Commissioner of Revenue, Hooghly, to *E. J. Harington*, Esq. Officiating Judge of Hooghly.

Sir,

With reference to your letter of yesterday's date, No. 278, and the copy of the correspondence that accompanied it, I beg to remark as follows :—

2. The instructions communicated to you in the letter from the register of the Sudder Dewanny Adawlut, to your address, No. 313, dated the 23d of January, 1835, do not define the precise amount of land which it is competent for the civil courts, in execution of decrees, to sell, without the intervention of the revenue authorities ; neither is that amount fixed by the clause in the Regulation, to which, in the above instructions, you are referred ; at the same time it is held by the Board of Revenue, that parcels of land less than 100 beegahs are to be regarded as " small portions," and no claim is made by government to a portion of lackheraj land (however defective may be the proprietor's title), which does not amount to 100 beegahs. The only object, as I conceive, why sales of land in execution of decrees passed by the civil courts, are made by the collectors is, that the government's interest in the lands may not be neglected. As government does not profess to have any claim upon lakheraj lands less than 100 beegahs in extent, there does not seem to be any good reason for requiring, in the case to which this correspondence relates, that the land shall be sold by the collector. If, however, you think it would be proper to refer the matter for the opinion of the Sudder Dewanny Adawlut, I see no objection to the following of such a course.

I have, &c.

Commissioner's Office,
14th Division at Hooghly,
29 December 1835.

(signed) *E. M. Gordon*,
Officiating Commissioner of Revenue.

(A true copy.)
(signed) *E. J. Harington*,
Officiating Judge.

Sudder Dewanny Adawlut.
Present: R. H. Rattray, W. Braddon, C. R. Barwell, Esqs. Judges, and N. J. Halhed, Esq. Officiating Judge.

Forwarding correspondence with the Judge of Hooghly relative to the quantity of land which civil courts may cause to be sold in satisfaction of decrees.

2d. Dissenting from the opinion of the Board of Revenue, and proposing to instruct the civil judges to call on the revenue authorities to sell certain lands for satisfying decrees.

(No. 182.)

From *J. F. M. Reid*, Esq. Register, Fort William, to the Register of the Sudder Dewanny Adawlut, Agra Presidency.

Sir,

I am directed by the court to request that you will lay before the court of Sudder Dewanny Adawlut for the Agra presidency, the accompanying copies of correspondence as per margin*, with the judge of Hooghly, relative to the quantity of rent-free land which it is competent to the civil courts to cause to be sold through their nazirs, in satisfaction of decrees under the provisions of Regulation VII. of 1825.

2. The court cannot concur in the opinion of the Board of Revenue, cited by the officiating commissioner of the 14th Division, in his letter of the 29th ult. that " parcels of land less than 100 beegahs are to be registered as small portions " of lakheraj land, which may be sold under the provisions of clause 2, section 2, Regulation VII. 1825 ; and propose, with the concurrence of the Agra Court, to instruct the civil judges to call on the revenue authorities to sell all portions of rent-free land exceeding 10 beegahs, the sale of which may be necessary for satisfying decrees of court.

I am, &c.

Fort William,
22 January 1836.

(signed) *J. F. M. Reid*,
Register.

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* Letter from Officiating Judge of Hooghly, dated the 6th January 1835, No. 1.
Letter to - - ditto - - dated 23d January 1835, No. 313.
Letter from - - ditto - - dated 30th December 1835, No. 284, and its Enclosure.

No. 8.

(No. 168.)

From *H. B. Harington*, Esq. Officiating Register, Allahabad, to *J. F. M. Reid*, Esq. Register to the Sudder Dewanny Adawlut, Fort William.

Sudder Dewanny Adawlut, Agrá Presidency. Present: W. Ewer, A. J. Colvin, and W. Lambert, sqrs. Judges.

Sir,

I AM directed by the court to acknowledge the receipt of your letter, No. 182, under date the 22d ultimo, with its enclosures relative to the quantity of rent-free land which the civil courts are competent, under the provisions of section 2, Regulation VII. of 1825, to sell through their nazirs, in satisfaction of decrees of court, without reference to the revenue authorities.

2d. In reply, the court direct me to observe, that in the absence of any specific declaration in the enactment itself as to what is to be considered as constituting a "small portion" of land, coming within the provisions of section 2, Regulation VII. of 1825, there is nothing to guide them in forming an opinion on the subject, but a consideration of what was the probable object which the Legislature had in view in limiting the powers of the civil courts in regard to the sale of lands held exempt from the payment of revenue in satisfaction of decrees of court.

3d. On this point the court direct me to observe, that the argument made use of by the commissioner of the 14th Division, in his letter to the judge of Hooghly, in which, in concurrence with the opinion of the Board of Revenue, he states that the sole apparent object why sales of land in execution of decrees by the civil courts are made by the collectors, is that the interest of government in the lands may not be neglected; and that as government does not profess to have any claim upon lakheraj lands less than 100 beegahs in extent, there does not seem any good ground why parcels of land under that quantity should be sold by the collectors, would appear to supply the only cause that can be assigned for the restriction above mentioned, and the court, as far as they have the means of judging, are disposed to consider that reason as good and sufficient, and to act upon it accordingly.

4th. But as any opinion which they may give as to whether 100 or 10 beegahs of rent-free land should be considered as constituting a "small portion" within the intent and meaning of the section of the Regulation above cited, must be altogether an arbitrary one, in consequence of the Regulation being silent on this point, and therefore defective, they would suggest that the whole of the correspondence which has taken place on the subject be submitted for the consideration of the Right hon. the Governor-general of India in Council, with a view to the removal of the doubts that have arisen by the enactment of an explanatory Act, which would be binding on the officers of both departments, judicial as well as revenue, and set the matter at rest.

I have, &c.

Allahabad, 12 February 1836.

(signed) *H. B. Harington*, Officiating Register.

(True copies.)

(signed) *J. F. M. Reid*, Register.

(No. 655.)

From *R. D. Mangles*, Esq. Secretary to the Government of Bengal, to *C. E. Trevelyan*, Esq. Officiating Secretary, Sudder Board of Revenue, Lower Provinces.

Revenue.

Sir,

I AM directed by the Right hon. the Governor of Bengal to request that you will lay before the Board, for report, the accompanyng copies of a letter from the register of the Sudder Adawlut, dated the 18th ultimo, and of its enclosure s relative to the construction of the expression quoted on the margin, from Regula tion VII. of 1825.

"Small portions of land held exempt from the public assessment."

2d. If they consider any limitation necessary, the Board will be pleased to state the point at which they think that it should be fixed, but his Lordship is not immediately aware of any sufficient reason why the several zillah judges should not be authorised to sell all lakheraj land in execution of decrees of court, without the intervention of the revenue authorities, to whom it must be perfectly immaterial whether a tenure, valid or invalid, be held by *A* or *B*.

3d. Further, the Governor requests that the Board will take the same opportunity of reporting, under distinct heads, with respect to lands paying revenue directly

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directly to government, and to under-tenures of whatever description respectively, why all sales in execution of decrees of court should not be conducted by or under the immediate orders of the judicial authorities by whom such decrees may be passed, without the intervention of revenue officers. If the Board consider such a measure, which has great and obvious advantages in regard to economy of time and labour in correspondence, &c., to be generally practicable, they will be pleased to state what safeguards will, in their judgment, be necessary for the security of the public revenue in cases where the tenure sold under a decree of court is that of a sudder malgoozar.

I am, &c.

Fort William,
3 May 1836.

(signed) *R. D. Mangles,*
Secretary to the Government of Bengal.

Sudder Dewanny Adawlut.
Present: R. H. Rattray, W. Braddon, Esqrs. Judges, and D. C. Smyth, Esq. Temporary Judge.

(No. 276.)

From *J. F. M. Reid,* Esq. Register, Fort William, to *R. D. Mangles,* Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

Submitting copy of the court's resolution regarding the duty to be performed by commissioners in regard to sale of lands by the revenue authorities.

I AM directed by the court to request you will submit for the consideration and orders of the Right hon. the Governor of Bengal, the accompanying copy of a resolution this day recorded, on the subject of the duty to be performed by the commissioners of revenue in regard to the sale of lands by the revenue authorities in satisfaction of decrees of court.

Stating that the accompanying correspondence will put government in possession of the facts of the case out of which this discussion arose.

2d. The accompanying copies of letter addressed to the register of the court of Sudder Dewanny Adawlut in the Western Provinces, by order of the court, under date the 18th November last, No. 2751, and of that officer's reply, dated 16th ultimo, No. 1082, will put the Right hon. the Governor in possession of the facts of the case out of which this discussion arose.

I have, &c.

Fort William,
27 January 1837.

(signed) *J. F. M. Reid,* Register.

RESOLUTION relative to the Sale of Lands by the Revenue Authorities in satisfaction of Decrees of Court.

Present: R. H. Rattray, W. Braddon, Esqrs. Judges, and D. C. Smyth, Esq. Temporary Judge.

Letter from Judge of Dacca, dated 12th April 1836, No. 199.
„ to - ditto - dated 6th May 1836, No. 954.
„ from - ditto - dated 21st May 1836, No. 254.
„ to - ditto - dated 1st July 1836, No. 1450.
„ from - ditto - dated 11th July 1836, No. 355.
„ to Commissioner Revenue 16th Dn. dated 5th August 1836, No. 1764.
„ from - ditto - dated 25th August 1836, No. 64.
„ to Register Sudder Dewanny Adawlut, Western Provinces, dated 18th November 1836, No. 2751.
„ from - ditto - dated 16th Dec. 1836, No. 1082.

THE court having taken into consideration the correspondence noted in the margin, are of opinion that the duty of confirming or reversing a sale of land made by a collector, in satisfaction of the amount of a decree of court, should be performed entirely by the zillah judge, under section 4, Regulation VII. of 1825; and that the duty of commissioners of revenue should be confined solely to directing the collector to select the lands for sale agreeably to section 2, Regulation XLV. 1793, and section 17, Regulation XXVI. 1803.

2d. The court deem it, however, proper before issuing any general instructions to the zillah judges, to refer the subject for the consideration of government, in order that, if considered necessary, the opinion of the revenue authorities may be obtained.

Ordered, That a copy of this resolution be forwarded to the Secretary to the Government of Bengal, with a request that it may be submitted for the consideration and orders of the Right hon. the Governor.

(No. 2751.)

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, Esqrs. Judges, and D. C. Smyth, Esq. Temporary Judge.

From *J. F. M. Reid*, Esq. Register, Fort William, to the Officiating Register of the Sudder Dewanny Adawlut, Allahabad.

Sir,

I AM directed to request you will submit, for the consideration and opinion of the judges of the Western Court, the following case :—

Requesting him to submit to the Western Court a case connected with the sale of certain lands in execution of a decree, and a letter from the commissioner of the 16th Division regarding the reversal of it.

2d. The judge of Dacca having ordered certain lands to be sold in execution of a decree, the sale was made by the collector on the 4th January 1836, accordingly. After the sale, but previous to the confirmation of the same by the commissioner, claims were preferred to the property in the judge's court, and on the 1st February 1836, the judge, Mr. Cooke, requested the revenue commissioner, Mr. Dampier, to suspend the confirmation of the sale until these claims had been disposed of. Mr. Dampier, the commissioner, postponed passing any orders on the case until the 18th March 1836, when, on the grounds set forth in his rubucuree (translation of which is entered in the margin)* he reversed the sale of the property. The judge of Dacca being of opinion that the commissioner exceeded his authority, referred the matter for the orders of the court. The commissioner was accordingly requested to favour the court with a statement of the grounds on which he deemed it necessary to reverse the sale, and to specify the regulations under which he considered himself competent to do so. Copy of his reply, dated the 25th August last, No. 64, is herewith annexed.

* "Although it is the opinion of the judge that the confirmation of the sale should be suspended, still should the sale remain unconfirmed till a final order is passed, the rights of government would be injured, the collections being suspended."

3d. The court are of opinion that the judge, Mr. Cooke, was not authorised to direct the commissioner to suspend the confirmation of the sale, but that the commissioner was equally in error in reversing the sale on the grounds set forth in his letter, as that officer is only authorised to reverse a sale when the sale rules have not been duly complied with, or to confirm it when made in conformity to the regulations.

4th. With regard to the protest contained in the second paragraph of Mr. Dampier's letter, the court are of opinion that in these cases the revenue officers are acting purely in a ministerial capacity in carrying the orders of the court into effect, and the court therefore consider themselves authorised to call for any information, and to issue such orders to the revenue authorities as may appear necessary for the due execution of the duty entrusted to them by the Regulations.

5th. The court therefore propose, should the Western Court concur, to inform the judge of Dacca and commissioner of revenue of the 16th Division, of the views held by them on this subject. They would instruct the judge of Dacca not to issue any orders to the revenue authorities after a sale has been made by a collector, until the commissioner has either confirmed or reversed the sale, after which the judge may of course, under section 5, Regulation VII. 1825, inquire into any objections preferred to the sale, and if necessary reverse it himself. They would also request the commissioner not to reverse any sale in future on the grounds assumed by him in the present instance, but merely to confine himself to the fact of the sale having been made according to the sale rules or otherwise, and to confirm or reverse the same on those grounds alone.

I am, &c.

Fort William,
18 November 1836.

(signed) *J. F. M. Reid*, Register.

(No. 1082.)

Sudder Dewanny Adawlut, Western Provinces. Present: M. H. Turnbull, W. Ewer, A. J. Colvin, and W. Lambert, Esqrs. Judges.

From *H. B. Harington*, Esq. Officiating Register, Allahabad, to *J. F. M. Reid*, Esq. Register, Sudder Dewanny Adawlut, Fort William.

Sir,

I AM directed by the court to acknowledge the receipt of your letter, No. 2751, under date the 18th ultimo, with its enclosures, from the commissioner of the 16th Division.

2d. In reply, I am directed to inform you that the court concur with the Calcutta court, that the course of proceeding observed by the judge of Dacca in

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the instance adverted to was irregular; and likewise that the commissioner was not warranted in issuing the order referred to in the 2d paragraph of your letter.

3d. With respect to the 5th paragraph of your letter, wherein the Calcutta court proposed to instruct the judge of Dacca not to issue any orders to the revenue authorities after a sale has been made by a collector, until the commissioner has either confirmed or reversed it; the court are of opinion that it does not fall within the proper province of a commissioner of revenue either to annul or confirm a sale of lands made by a collector under the orders of a civil court in satisfaction of a decree, but that the duty of the commissioner in such cases is confined to directing the collector to select and bring to sale such portion of the lands included in the statement received from the civil court as he may consider most convenient to sell in satisfaction of the award: and in the event of a collector being guilty of any irregularity in publishing and conducting such sale or otherwise, the party deeming himself aggrieved thereby has his remedy in a summary application to the zillah or city court which may have ordered the sale, agreeably to the provisions of clause 1, section 5, Regulation VII. of 1825, which expressly invests all judicial officers who may have ordered sales of land by revenue officers, with power to declare such sales null and void, and to order a resale if on summary inquiry any material irregularity be satisfactorily established, but confers no such authority on the commissioners of revenue; and the court are consequently of opinion that those officers cannot legally exercise it; that, in fact, they have no jurisdiction in matters of this nature beyond that with which they are invested by section 17, Regulation XXVI. of 1803, as modified by clause 3, section 4, Regulation VII. of 1825.

On the subject of the 4th paragraph of your letter, the court direct me to observe, that as the commissioner would appear to have waived his objection to the call for explanation made upon him by the Calcutta court, they are of opinion that it would be better not to take further notice of the subject on the present occasion, as the discussion might give rise to questions of form and practice admitting of doubt, and the determination of which might be attended with difficulty; and as the Calcutta court have not called upon this court for an expression of their sentiments on this part of the subject, they propose to defer offering any opinion in regard to it until a case may arise more particularly calling for a decision on the point.

I have, &c.
(signed) *H. B. Harington*,
Officiating Register.

Allahabad,
16 December 1836.

(True copies.)
(signed) *J. F. M. Reid*, Register.

(No. 251.)

From *R. D. Mangles*, Esq. Secretary to the Government of Bengal, to Secretary Sudder Board of Revenue.

Sir,

Revenue.

No reply having been received to orders of the 3d May last, regarding the construction of the expression "small portions of land held exempt from the public assessment" contained in Regulation VII. of 1825, and other points, I am directed by the Right honourable the Governor of Bengal to call the attention of the Board to the subject of that reference, and to request an early report.

I am, &c.
(signed) *R. D. Mangles*,
Secy to the Govt of Bengal.

Fort William,
21 February 1837.

(No. 143.)

From *F. J. Halliday*, Esq. Secretary, &c. to *R. D. Mangles*, Esq. Secretary to the Government of Bengal, Revenue Department, Fort William.

Sir,

Misc. Dep.

I AM directed with reference to your letters, No. 655, of the 3d May 1836, and No. 251, of the 21st February last, to forward, for the consideration of the Right honourable

honourable the Governor of Bengal copies of the Minutes noted in the margin, together with a set of Rules for the conduct of sales of malgoozaree lands, on satisfaction of decrees.

Minute by Senior Member, 22d June 1836, with Junior Member's opinion added.

I have, &c.

Sudder Board of Revenue, (signed) *F. J. Halliday*,
Fort William, 4 September 1837. Secretary.

Minute by Mr. C. W. Smith, of 14th Nov. 1836. Ditto by ditto, 13th Dec. 1836.

MINUTE by Senior Member.

I HAVE considered the letter from the secretary to the Government of Bengal, under date the 3d May 1836.

We are desired to submit our sentiments on the following points:

1st. Why all sales of land in execution of decrees of court, whether lakeraj or malgoozary, or under tenures of whatever description respectively, should not be conducted by or under the immediate orders of the judicial authorities by whom such decrees may be passed, and without the intervention of revenue officers.

2d. As to the proper construction of the portion quoted in the margin of Regulation VIII. of 1825, and if any limitation be considered necessary, the extent of that limitation.

Small portions of land held exempt from the public assessment.

3d. What safeguards will be necessary for the security of the public revenue in cases where the tenure sold under a decree of court, and under the immediate orders of the judicial authorities, is that of a sudder malgoozar.

The government, it is declared, considers the measure of transferring these sales to the judicial authorities has great and obvious advantages, in regard to economy of time and labour in correspondence, &c. &c.

I beg respectfully to state, that as far as my experience enables me to judge, such a measure could not be put in practice, with any due observance of the rules and safeguards which it would require, without entailing on the public officers whose duties it would be to carry it into execution infinitely more labour and time than is required to conform to the existing rules.

The judicial authorities could not with any hope of accuracy prepare the papers for a sale of lands, &c. advertisements, solbundy, and account sale, &c. without the necessity for repeated reference to the collector's office and records, to say nothing of the great additional difficulties, embarrassments, and mistakes which would be necessarily incurred during the period the native judicial officers would be acquiring a knowledge of this duty.

As it is at present, the collectors possess at their immediate command records showing the names of malgoozary estates, of their proprietors, and the sudder jumma fixed on them respectively; yet accuracy, with these important advantages, is only obtained by great vigilance of superintendence, and by the great facilities of check and control; whilst it is notorious that the least relaxation in this respect is always productive of errors and irregularities, which entail on this Board, before they can be corrected, and sometimes on the government, a very vexatious addition to its ordinary labours.

Comparatively speaking, it appears to me to be unquestionable that a collector should experience no difficulty in preparing for and conducting with every accuracy and promptitude that is requisite, sales of land, whether malgoozary estates or under tenures, or lakeraj lands; and I am equally convinced that difficulty, delay, and disappointment would, for many years at least, (however judicious might be the rules and safeguards provided) prevail, were the sales of land in execution of decrees conducted by and under the immediate orders of the judicial authorities.

I have no objection to offer to the precautionary rules prepared by my colleague for observance; they are good as far as they go; but practical experience can alone suggest all the preventive rules which will be needed to protect the rights of government in malgoozary estates, if so wide an opportunity to fraud and deception is created, as would necessarily be, were the revenue officers relieved from duties, which long experience, immediate access to records, and long existing habits of practice and responsibility, have made them and their native officers so peculiarly qualified to execute adequately and satisfactorily.

It is not, I consider, desirable for the interests of the government that the revenue authorities should be deprived of any portion of the fiscal influence created by their conducting all sales of land; and it was the increase of this influence

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that I considered rendered it particularly advisable that the revenue authorities should, as far as might be practicable, carry into execution summary judgments for rent.

I cannot imagine any safe plan, according to which sales of land in execution of decrees could be conducted (as proposed by the judicial authorities), without multiplying official labour, uncertainty, irregularity, and occupation of time, nor without great risk of even much more serious evils.

The causes have not yet been thoroughly ascertained, but the fact is indisputable, that the government revenue is realized with greater difficulty, with respect to promptitude, to what it was formerly, and therefore I submit this is not the fittest moment to adopt any measure manifestly calculated to abstract from the influence and prevalence of the authority of our collectors.

I beg to be excused the liberty I am taking in referring to the judicial bearings of this question, but I hope I may, without incurring blame, respectfully submit that the consistency may be questioned of imposing on the judicial authorities the duties of conducting sales in execution of decrees when the courts have so recently been divested of the power of selling lands in execution of summary awards for arrears of rent, and so much relieved of their former labours by the creation of native judges, to whom have been assigned powers and jurisdiction so very extensive.

In conclusion, as I am adverse to a change of system, transferring to the judicial from the revenue authorities the immediate conduct of sales in execution of decrees, whether for malgoozary or lakeraj lands, it remains for me to state the point at which I think the limitation should be fixed, in order to assign an uniform construction of the expression in Regulation VII. of 1825, viz. "small portions of land held exempt from the public assessment." I think that limitation should be confined at 100 rupees.

I entertain no doubt that the landholders would one and all object to any change in the present system which would transfer the sale of land in execution of decrees to the courts, and that such a change would cause great and general dissatisfaction amongst all concerned with agriculture, and tend considerably to diminish the value of landed property.

22 June 1836. (signed) *J. Puttle.*

I concur with senior member in thinking it would not be advisable to remove the power of selling malgoozary estates in satisfaction of decrees of court from the collectors of revenue.

(signed) *H. Walters.*

MINUTE by Mr. *C. W. Smith.*

I HAVE considered the question regarding the expediency of making judges sell land in execution of their own awards. The following precautions would be necessary; others will probably be suggested by my colleague, and we may then discuss the subject before drafting our reply to government.

1st. As to lands held rent-free:

To prevent collusion and fraud, it would be necessary that the judge * should refer the petition of the party holding a decree who applies to have rent-free lands sold to the collector, and that the collector should certify, in his return, whether the land in question is held rent-free or not, and whether the name of the party against whom the decree is given is or is not registered as proprietor, or joint sharer in such rent-free land.

That the judge, on receiving the reply, provided the land alleged is rent-free, should proceed to sell it, but if the name of the party is not registered, that he should cause a local inquiry to be made, whether the party is in possession of the whole, or what portion of it, and then proceed to sell the rights and interests of such party so ascertained.

Next, as to revenue lands:

Here we must cautiously guard the government rights so expressively laid down in Clause 3, Section 3, Regulation XIV. of 1825.

When

* At present I would not vest any other functionary except the judge with the power of making the actual sale, but the preliminary investigation might be conducted by the sudder ameen.

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When the decreedar applies to the judge to sell revenue lands it will be necessary that the judge should apply to the collector to ascertain the following points:

1st. Is the debtor the recorded proprietor of the entire estate, or a co-sharer if the estate be undivided?

2d. Is the estate in balance to government or not?

3d. Are you aware of any other cause which would compromise the rights or claims of government?

If the collector replies to this requisition by stating that the debtor is the recorded proprietor of the whole estate, or a co-sharer in an undivided estate, and that the estate is not in balance to government, nor has government on other account any cause to object, in such case the judge might proceed to sell either the entire estate or the rights and interests, as the case may be. If the collector joins to the information of the debtor being a recorded proprietor, that the estate itself is in balance to government,* it would be necessary that the judge should issue an injunction to the collector to sell the estate for the balance, sending the surplus proceeds of sale to him, the judge, and leaving the judge, of course, to dispose of all claims to the same.†

If the collector in reply to the judge's requisition sends information that the debtor is not a recorded proprietor of the estate, in such case the judge should cause a local inquiry to be made, through his moonsiff, to ascertain whether the debtor, although not a recorded proprietor, is or is not a joint sharer in the estate; and if satisfied by the reply that the debtor is a sharer, he might then put up to sale the right and interests of the said debtor, whatever they be.

14 November 1836. (signed) *C. W. Smith.*

By Mr. *C. W. Smith.*

MINUTE regarding the Transfer of Sales in Execution of Decrees to the Judicial Authorities.

IN my former Note of the 14th November last, I confined my remarks to a consideration of the safeguards which it would be necessary to introduce for the protection of the public revenue, provided the judicial authorities should be declared competent to sell rent-free and malgoozary lands, in execution of their own decrees, reserving the discussion of the expediency of giving such powers to the courts, and of the subject generally, until favoured with my colleague's opinion.

The senior member, in his Minute of the 22d June last, has entered into a full discussion touching the expediency of the proposed measure, and having declared himself unfavourable to its adoption, has stated the several objections and difficulties which occur to him against conceding the power to the judicial authorities of selling landed property in execution of decrees of court.

In a matter of so much moment as that of introducing the above important change into the existing law, it would not be considered sufficient that I should state my own opinion to be favourable to the projected alteration, unless I could at the same time demonstrate that the objections made to it have been entertained on insufficient grounds, or though entitled to some weight, are not so great as to leave a comparison with the concomitant advantages which will attend it.

I am altogether in favour of the alteration. I believe it will be an economy of time and labour both to the Judicial and Revenue departments; that it will relieve the revenue authorities from a very unnecessary and heavy duty, without causing any of those dangers anticipated by my colleague; that it will relieve the judicial authorities from much unnecessary trouble and many vexatious references; and that the measure itself will be found to be in strict consistency with the tenor of Act VIII. 1835, which "transferred" the power of selling "lands in execution of summary suits, hitherto vested in the judges of the Dewany Adawlut, to the collectors of revenue," by saddling the functionaries in each department with the duty of executing their own decrees.

I shall

* It would be requisite that the judge give notice to the collector of every sale made by him within seven days of its taking place; the collector to certify on the notice what revenue was due to the day of sale, and the judge reserving that sum before paying the decreedar.

† If the collector's sale was avoided by the revenue being paid, and the collector had no other claims on account of sureties, &c., in such case the judge, on receiving a notification to that effect from the collector, could proceed to sale.

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I shall now proceed to consider, one by one, the objections to this measure which are brought forward by my colleague, and I shall then embody in a more complete and tangible shape the several precautions which will be necessary for the security of the public revenue where the tenure to be sold under a decree of court is that of a sudder malgoozar.

These objections may be thus enumerated :

1. The judicial authorities could not prepare the advertisement, lotbundee, and account sale without the necessity of repeated references to the collector's office and records, producing infinitely more labour and loss of time than is experienced under the existing rules.

2. The native judicial officers would create additional delays, difficulties, disappointments, and embarrassments, and mistakes, during the period they were acquiring a knowledge of this duty.

3. That although the collectors of revenue have at their immediate command records showing—

1st. Names of malgoozaree estates ;
2d. Names of the proprietors ;
3d. Sudder jummah ;

Yet with all these advantages, accuracy is not obtained but by vigilant supervision, and by special facilities of check and control, and any relaxation is always productive of errors and irregularities, which entail on the Board, and sometimes on government, an addition to their ordinary labours.

4. It is impolitic to deprive the revenue authorities of the influence derived from their conducting all sales, and it was to increase this influence that the senior member deemed it advisable, as far as practicable, that collectors should sell in awards for rent.

5. That with reference to the present difficulty in realizing the government revenue, the present is not a fit moment to detract from the influence and authority of the collector.

6. That when the courts, though their labours have been so much lightened by this creation of native judges, have been so recently deprived of the power of selling lands in execution of decrees for arrears of rent, it seems inconsistent to propose giving them the power to sell lands in execution of their own decrees of court.

Taking them up in consecutive order, I commence with the first objection, that the information which a judicial officer would require preparatory to issuing advertisements for sale could be obtained by a single reference to the collector of revenue. This information is as follows :

1st *Objection.*—The judicial authority could not prepare the advertisement, lotbundee, and account sale without the necessity of repeated reference to the collector's office and records, producing infinitely more labour and loss of time than is experienced under the existing rules.

1. The names of the recorded proprietors in the estate, the whole or a share in which he proposed to sell.

2. The sudder jumma, and where subdivided, its component parts, with a specification of names.

3. Information whether the estate or share of estate is in balance to government, and to what amount.

This is all the information which the court could want, or which the collector could give ; and it is worthy of peculiar notice, that no additional trouble would be incurred by this reference, as the information is of that nature, without which no collector could prepare his advertisement and lotbundy. The moment that the court received the collector's reply, advertisement of sale would issue if the party from whom the amount of the decree was due was found to be possessed of the alleged property.

The lithographic form in which this information might be embodied will be found in its place at the conclusion of this Minute, where I lay down the precautions to be observed, &c.

If this prompt and easy process, preliminary to the issue of advertisements of sale by a judicial officer, be compared with that laid down in Regulation XLV. 1793, Regulation XX. 1795, Regulation XXVI. 1803, and Clauses 2 and 3, Section 4, Regulation VII. 1825, which are at present in force, the simplicity of the one, and the great and unnecessary trouble, delay, and expenses of the other, will be at once apparent.

1. The court whose duty it may be to execute the decree must transmit a copy (1)

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copy (1) and a translation (2) of the decree to the Board of Revenue, (now the commissioner of revenue), as well as a statement (3) of the lands which the party issuing out execution may point out as belonging to those from whom the amount of the decree is demandable.

2. The Board of Revenue must then prepare a second copy of these three documents, *i.e.* the decree (4), the translation (5), and the statement (6) of lands, and write a Persian or an (7) English proceeding, when transmitting them to the collector, instructing him to select any parts of the lands for sale which may appear sufficient.

I speak from experience. *Vide* my letter as commissioner of revenue at Patna, which is annexed.

3. The collector, after having carried these orders into effect, has to transmit two proceedings, one (8) to the commissioners and a second (9) to the court, intimating what lands be proposed to sell, or otherwise; he informs them that the party has no property in the lands, and all this labour is then thrown away.

It will thus be found that the court selling the land could proceed to issue the advertisement of sale without entailing any additional trouble on the collector than he is obliged to take in every instance of sale in his own office, and without all these complex references, and multiplication of copying papers, and attendant expense, which I have thus enumerated.

2d *Objection.*—The native judicial officers would create additional delays, difficulties, disappointments, and embarrassments, and mistakes, during the period they were acquiring a knowledge of this duty.

I really do not see the force of this objection, and I think it will disappear at once when it is remembered that the duties of a collector in selling lands, in execution of a decree of court, are the mere mechanical operations of an auctioneer; that is, if the party by whom the amount is due does not pay the same by the day of sale, the collector puts up the property and knocks it down to the highest bidder. All the more difficult points in sales under decrees of court, such as petition denying that the amount is due, or denying that the estate or share of estate belongs to the party whose name appears in the advertisement and lot-bundee, all counter claims, and all objections to the sale of every decription, must be referred, under the existing law, to the judicial authorities under whose orders the sales take place. In fact, all the real difficulties attending a sale for arrears of revenue, which form the subject of revision in the Revenue Department, either do not exist in sales under a decree, or are determined by the judicial officers themselves, even in the present state of the law; and the courts of law, to whom indeed all sales are ultimately appealable, have a much more intelligent and efficient body of men to protect the interests of either party in their constituted vakeels, than the comparatively ignorant and irresponsible race of mooktears who appear in a collector's kutcherry.

I am thoroughly convinced that the judicial officer sitting in court, with his vakeels ready to advocate the interests either of the party holding the decree, the party from whom the debt is due, or the third party objecting to the sale, would not make half the mistakes which are continually brought to our notice in the Revenue Department; and that the appellate authority, to whom a final and conclusive power to reverse or confirm the sale should be given, would have placed before him, by his pleaders, the arguments for and against the sale, drawn out with infinitely more acuteness, and in a much more correct shape than the loose and irrelevant productions which the parties themselves, or their mooktars, usually present to the Board or commissioner.

Vide supra - - - - -

3d *Objection.*—That although the collectors of revenue have at their immediate command records showing,
1st. Name of malgoozary estates;
2d. Ditto of their proprietors;
3d. Sudder jumma; yet with all this advantage accuracy is not obtained but by vigilant supervision, and by special facilities of check and control, and any relaxation is productive of errors and irregularities, which entail on the Board, and sometimes on government, an addition to their ordinary labours.

4th *Objection.*—It is impolitic to deprive the revenue authority of the influence derived from thus conducting all sales, and it was to increase this influence that he deemed it advisable, as far as practicable, that collectors should sell in awards for rent.

I have already pointed out that the power of collectors in the sale of lands in execution of a decree of court are restricted to the mere mechanical duties of an auctioneer; that the authority and order for the sale emanates from the courts, from a sudder ameen, for instance, to whom all points of difficulty or objection are made or referred, and who, in fact, stands over the collector, reversing the sale where he sees proper.

To my mind, the influence and dignity of the collector is rather impaired than strengthened by the subordinate position in which he stands to the courts in such sales, and so long as he has the power to sell the largest yeemeenduree in his district,

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district, if the public revenue is not punctually discharged, he will feel no diminution of his authority and influence from being no longer employed to play the part of auctioneer to the courts.

5th *Objection.*—That with reference to the present difficulty in realizing the revenue of government, the present is not a fit moment to detract from the influence and authority of the collector.

I have already given my opinion on the preceding paragraph, that the influence of the collector will not be impaired by leaving the judicial authorities to execute their own decrees, &c. The increasing difficulty in realizing the government revenue is a subject which has long occupied our attention, and we have ever considered the overwhelming multiplicity of duties which are allotted to the revenue authorities as one of the causes from which, if that difficulty has not originated, yet which operates to deprive him of the power of giving his undivided attention to his more strictly fiscal duties. In this respect then, by relieving him of a heavy duty, which more properly belongs to another defendant, he will be enabled to give greater attention to the many subjects more immediately connected with the balances of revenue in his district, a greater efficiency in the realization of which is so truly desirable, and is so intimately and directly connected with the influence he possesses in the district.

6th *Objection.*—That when the courts, though their labours have been so much lightened by the creation of native judges, have been so recently deprived of the power of selling lands in execution of decrees for arrears of rent, it seems inconsistent to propose giving them the power to sell lands in execution of their own decrees of court.

I look upon this measure in a totally different light from my colleague. I can see no inconsistency; on the contrary, I observe the same principle at work in the alteration of the law which is now proposed as that which led to the enactment of Act VIII. of 1835.

It was considered an anomalous proceeding, fraught with unnecessary detail and delay, that the award of one court should require the assistance of another court to execute it, and for the same, or even stronger reasons, it is considered a waste of time and labour to send a decree of court for execution *quoad* sale of lands to the collector, while the whole control and power of settling upon and deciding the validity of such sale is left with the court itself; thus the same reason which dictated the transfer on that occasion operates in favour of the transfer now proposed.

And this leads me to consider, in the last place, what safeguards are necessary, so that this power to sell lands in execution of a decree may be vested in the judicial officers, without endangering the public revenue.

1. It is necessary to protect the primary indefeasible rights of government to levy any arrears of revenue which may have accrued on the estate or share of estate about to be sold by the courts before the proprietary right in such estate or share of estate is transferred by sale to another person.

This object cannot be obtained with that degree of safety and accuracy certainly which its importance demands by any other mode than by special enactment, that where an estate or share in an estate, standing in the name of a registered proprietor, which is about to be sold, in satisfaction of a decree, is in arrears of revenue to government, the sale shall in such case be made by the judge or other officer of government in the Judicial Department, who, after concluding the sale, shall first deduct the balance of revenue up to the day of sale, with the prescribed penalty and interest, from the amount of purchase-money, remitting to the collector his full demand, without question or demur, who will forward a dakhila or receipt for the amount, to be filed with the proceedings of the judge, and the judge shall then pay the residual sum to the party, to whom the amount of the decree is due.

2. Provision must also be made for the realization of any arrear of public revenue on estates or shares of estates sold by the courts, which, although not in balance up to the date on which the judicial officer, having ascertained that point, issued his advertisement of sale, have fallen into balance between that period and the date of actual sale.

The principal cause of delay in bringing to actual sale lands fixed upon for the satisfaction of the decree is the investigation of claims either by co-sharers, alleged purchasers, mortgagees, or other creditors. These inquiries frequently consume so much time, that occasionally a whole year may elapse between the first advertisement and the sale. I think it would be found a good plan to issue, in the first instance, a simple attachment and notification for the appearance of claimants, and not until all claims had been disposed of to apply for information to the collector.

Nothing

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Nothing could in such case prevent the sale taking place on the day fixed upon after the receipt of the particulars from the collector's office, and in that short period little or no arrear of revenue could accrue.

3. Care must be taken to protect the interests of government from the injurious effects likely to arise from any irregular or illegal specifications of the share, or juma or rugbah of shares of estates sold by the courts.

This most important principle will be best obtained by a strict adherence to the following rule:

In the ishtehar of sale, and the lotbundee, &c., whether the party whose property is about to be sold be a recorded proprietor of a distinct estate, or a recorded proprietor of a share in a divided or undivided estate, or otherwise, it shall be specifically mentioned that no more than the rights and interests of such party are to be sold, and nothing is guaranteed to a purchaser under a sale made by the civil courts, save and excepting the said rights and interests of the said party, whatever they may be.

I shall conclude this Minute by giving specimens of the following Forms for giving effect to the provisions and precautions necessary to secure the public revenue in sales made in execution of the decrees of the civil courts, which, if approved, should be appended to the new law which it will be necessary to frame.

1. Form of lithographed letter from the court to the collector, calling for information as to the names of the recorded proprietors, and other particulars, &c. &c.

To the Collector of

Zillah _____

No. of Suits; Names of Parties.
—— plaintiff,
v.
—— defendant.

Sir,

In the suit noted in the margin, A. has presented a petition to this court, praying that the landed property as per particulars, and belonging to the parties detailed in the margin, shall be sold by this court.

STATEMENT of Lands to be Sold.

Name of Proprietor from whom the Decree is due.	Statement of Lands given by Parties to whom the Decree is due.		
	Pergunnah.	Estate.	Share.
A. -			
B. -			
C. -			

2. I hereby enclose an istehar of sale, by which you will perceive that the day of sale is fixed for the _____

3. You are requested to fill up and return the annexed form within _____ days of receiving it.

4. If the landed property in question, or any part of it, belongs to any of the said parties, and is in arrear of revenue to government, you will be pleased to notify the same in column 7, together with any further sum of interest or penalty which may be due by the said parties, calculated up to the _____ of _____ 18__

5. If there are any other claims against the property or the party whose rights and interests in the same are about to be sold, you are at liberty to state the same, or to bring them forward in my court.

I have the honour to be, &c.

_____ Court,
_____ 183__.

(signed)

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Sale in Execution of Decrees of Civil Courts.

Form to accompany the letter from the judicial officer to the collector:

1. No.	2. Pergunnah.	3. Name of Estate.	4. Sudder Jumma.	5. Name of the recorded Proprietor.	6. Specific Share of each recorded Proprietor; or if not divided, state undivided. Name.	6. Share.	7. If in arrear of Revenue, state Amount due by each Proprietor; or if Shares are not divided, state the Round Sum.	Rs.	a.	p.	8. REMARKS.
							Arrears -				Here state any additional information, also any identity of interests or relationship between the recorded proprietor and that of the party by whom the amount of decree is due which may have transpired.
							Interest -				
							Penalty -				

2. Form of lithographed letter from the collector to the judicial officer returning the figured statement:

No. of Suit.
—— plaintiff,
v.
—— defendant.

To the Judge of _____.

Sir,

I HAVE the honour to return the figured statement, duly filled up, received with your letter No._____, of the _____, which reached this office upon the _____, in the case noticed in the margin.

Collector's Office,
_____
_____183___.

I have, &c.
(signed)

Should the sale not take place on the day mentioned, it will be necessary for the judge to ascertain the exact amount of revenue due to government up to the day of sale by a letter to the following effect:

To the Collector of _____.

Sir,

IN continuation of my letter of the_____, I have now the honour to inform you that the sale of the_____property did not take place until the _____.

2. I request you will inform me within_____days what demand is due to government on the estate in question as arrear of revenue up to that date.

_____
_____Court,
_____183___.

I have, &c.
Sir, your obedient servant,

The form which now follows is to be drawn up by the judicial officer after he shall have received the figured statement from the collector, and the advertisement of sale, lotbundee, and the terms of the account sale will be regulated by it.

1. No.	2. Pergunnah.	3. Name of Muhal.	4. Sudder Juma of whose Estate.	5. Name of recorded Proprietor in Collector's Office.	6. Names and Shares of recorded Proprietors by whom the Amount of Decree is due, whose Right and Interest only are to be Sold. Name.	Share.	Right and Interest in Share.	7. Names of Persons to whom the Amount of Decree is due.	8. Amount of Decree.	9. REMARKS.
										Here state the principle laid down in Clause 7, Sec. 3, Regulation VII. 1825.

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It will often occur that the figured statement, when filled up and returned by the collector, will not exhibit the name of any one of the parties by whom the decree is due, and that subsequently a petition may be filed asserting that, although these parties are not recorded in the collector's office regulation, yet that they are actual shikune proprietors, or have other transferable right in the property. In such case it is usual with some courts* to institute a local inquiry. When this local inquiry, or any other mode of inquiry which the court may see fit to adopt, establishes the fact that the party by whom the decree is due has a saleable right in the property, of which he is in actual possession, the following form would be a suitable shape for drawing up the information obtained, and the precise nature of the property about to be sold, and would regulate the terms of the advertisement, lotbundy, and account sale.

1. No.	2. Pergunnah.	3. Name of Estate.	4. Sudder Juma of whole Estate.	5. Names of recorded Proprietors.	6. Names of Persons not recorded Proprietors, whose Right and Interest, whatever they may be, are about to be Sold.	7. Names of Persons to whom the Decree is due.	8. Amount of Decree.	9. REMARKS.
								1. Here may first be stated the inquiry, local or otherwise, and the result of it, to ascertain that the party from whom the amount of decree is due have transferable property in the estate. 2. The principle of Clause 7, Sec. 3, Regulation VIII. of 1825, must be inserted.

I have thus shown the safeguards which I consider necessary, may be practically obtained. I should not conceive that the courts would experience the slightest difficulty in effecting sales in execution of their own decrees.

On the contrary, I have a strong impression that they would execute their own decrees in a far more prompt and efficient manner than under the complicated system by which sales in execution of decrees are now conducted.

The delay under the present system is so great as scarcely to be credited, and thus it must continue to be so long as the party interested in obstructing a sale can play his procrastinating game between two offices.

It will be necessary to repeal all the Regulations which now exist, and to frame a new law,† but I am not aware of a single difficulty which would be experienced in so doing.

Sale of Lakheraj Tenures.

I see no necessity for any particular precautions in regard to the sale of rent-free land. The courts never direct a sale without some inquiry as to whether the party

* The practice varies in many courts; no local inquiry is made, and the court trusts to the nazir's report after the return of the person who served the proclamation and attachment, and to the usual readiness with which claimants make this appearance to contest right or wrong; the right of property in the land about to be sold in execution of the decree, at the present period, when the duties of moonsiffs have assumed so much more importance, and their time is fully occupied in the decision of civil suits, their deputation for the purpose of making local inquiries of the nature now under consideration would not be permitted; however, this is a subject which does not affect the question at issue, since equal difficulties would be experienced by the courts in determining the right of property in land, goods, or chattels, about to be sold in execution of a decree, whether the sale was conducted by a court or a collector of revenue.

† In the new law it will be necessary to re-enact provisions for a deposit of a portion of the purchase-money for cases of resale, &c., and to define what judicial authority shall be empowered to conduct sales. I should not think that the duty could well be entrusted to any officer under the rank of a sudder ameen. The courts would of course draw up the deeds of sale, and notify the sales to the collector of the district.

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party is in possession, and it is quite immaterial to government whether *A.* or *B.* is in possession of such land; and it is scarce necessary to mention that no sale by a judicial officer can confer any validity upon land alleged to be rent-free, which, by a subsequent decision, is declared liable to assessment.

It will of course be necessary to restrict the sales made by the civil courts to estates permanently assessed, and to declare that no proceeding of a civil court in selling an estate in satisfaction of a decree, shall bar the revenue rights and interests of government in the property within 12 years after the sale.

It will also be necessary to provide that the collector of revenue shall be fully at liberty to bring an estate to sale,* for as demand of government, notwithstanding any proceedings of the judicial authorities to bring it to sale for execution of a decree or other award, notifying the same to the judge.

I wish this Minute to be recorded, and a copy of it to be submitted to government with the reply to the letter of government, under date the 3d May 1836.

The subject is one of great importance, and the papers must now be laid before the third member.

I have, &c.

13 Dec. 1836. (signed) *C. W. Smith.*

Decree Jaree Sale Rules.

All sales, by whatever authority authorised or held, in satisfaction of decrees of court, shall be of the nature of private transfers, and shall not affect processes of collector for realization of revenue, or the rights and interests of co-sharers in the estates sold, or mofussil tenures or tenants, any more than would a private sale by one individual to another.

2. Sales in satisfaction of decrees shall be held by collector, or other duly authorised revenue officers, under precept of the judge.

3. When the judge may direct lands to be sold, the collector shall sell the rights and interests only in the lands of the party against whom the decree is to be enforced in the property sold, or in a specific defined share or portion or ruchhan thereof, but not with any defined juma.

4. No sale of lands in satisfaction of a decree where a recorded proprietor declares the party against whom the decree has passed has no interest or right, shall take place till the right be established by a suit in court.

5. No sale of lands in execution of a decree shall take place except after advertisements at the moonsiff's kutcherry in the tannah in which the property, or the principal part of it is situated, at the judge's court, and the collector's sudder kutcherry, for a period of 30 days previous to the day of sale.† The advertisements and the lotbundy shall specifically state, that from the proceeds of the sale will be first deducted whatever arrears may be due to government on the day of sale, from the lands sold.

6. The collector shall not entertain any objections to the sale to be made, but shall refer all petitions touching the same, whether before or after sale, to the judge, who shall pass such order as he may think fit thereon. The collector is to be merely the ministerial officer executing the judge's precept.

7. The collector on completing the sale shall make his return to the judge's precept, and forward to him the money realized, minus the arrear of revenue that may be then due to government.

8. No order interfering with the authorised revenue measures of the collector, under the existing regulations relative to estates advertised for sale for decrees, or the revenue to be paid on the rights and interests sold, or on any question touching the revenue status thereof, shall be issued by the judge, or if issued, shall be of any effect.

9. The judge shall be competent to annul a sale held in satisfaction of a decree if he think fit, provided his order is passed within 20 days from the date of sale, and provided all arrears of revenue then due to the government shall be paid up.

10. The

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* Should it so happen that the date of sale fixed by the judge and the collector be the same, the collector will complete his sale, and the judge will stay proceedings until made acquainted with the reults.

† The object is to permit the collector to realize the government revenue, if in arrears, by sale previously.

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10. The collector shall forward to commissioner, for his information, statements of all sales ordered to be held in satisfaction of decrees; all appeals against such sales shall be made to the judge.

11. Should the commissioner see grounds to object to a sale in execution of a decree, on the plea of illegality, *i. e.* on any of the grounds set forth in Section 5, Regulation XI. 1822, or on any point involving the permanent interests of the government, he shall have a right of appeal to Sudder Dewanny Adawlut, through the judge, who shall forward that appeal within five days after it has been preferred. The Sudder Board of Revenue shall in like manner be at liberty to bring before government, for final orders, any case that may appear to them to require such notice.

12. No purhaser buying at a sale held in execution of a decree, shall be entitled (merely by virtue of his purchase) to registry in collector's books as proprietor, unless the name of the party whose rights and interests he has purchased, was registered as proprietor of the full right sold; or, in other words, the purchaser of such by virtue of his purchase merely will be allowed only in the register the same place as was held by the individual whose rights and interests have been sold, and no place if that individual had none. He will not, however, be debarred from pursuing the prescribed course in order to obtain registration of his name as a proprietor, should he think fit.

13. All forms, statements, reports, &c. now in use between collector and commissioner, touching the sales referred to, to be discontinued, except such as are specified in these rules.

(True copy.)
(signed) *F. J. Halliday*, Secretary.

Sudder Board of Revenue, Fort William,
4 April 1837.

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, Esqrs. Judges, D. C. Smyth, Esq. Temporary Judge, J. R. Hutchinson, and J. F. M. Reid, Esqrs. Officiating Judges.

(No. 1490.)

From *R. Macan*, Esq. Officiating Register, Fort William, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

In continuation of my letter, No. 276, of the 27th January last, on the subject of the duty to be performed by the commissioners of revenue, in regard to the sale of lands by the revenue authorities in satisfaction of decrees of court, I am directed by the court to forward to you the accompanying copy of a letter, with its enclosure, from the register of the Sudder Dewanny Adawlut in the Western Provinces, and to request that you will lay the same before the Right honourable the Governor of Bengal.

I have, &c.
(signed) *R. Macan*,
Officiating Register.

Fort William,
26 May 1837.

Sudder Dewanny Adawlut, North-west Provinces. Present: M. H. Turnbull, A. J. Colvin, W. Lambert, and W. F. Dick, Esqrs. Judges.

(No. 410.)

From *H. B. Harington*, Esq. Register, Allahabad, to *J. F. M. Reid*, Esq. Register to the Sudder Dewanny Adawlut, Fort William.

Sir,

I am directed by the court to require that you will submit, for the perusal of the Calcutta Court, the accompanying copy of a letter from the judge of Moradabad, under date the 20th instant.

2. The court observe that the point submitted by Mr. Tayler is at present under the consideration of the Calcutta Court, on a reference from the judge of Dacca, and the commissioner, of the 16th December, in regard to which the opinion of this court was communicated in my letter to your address, No. 1082, under date the 16th December last, and the court therefore await the receipt of a reply to that communication, to which they beg to request the attention of the Calcutta Court, previously to passing any orders on the present reference from the judge of Moradabad.

I have, &c.
(signed) *H. B. Harington*, Register.

Allahabad,
28 April 1837.

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(No. 24.)

From *B. Tayler*, Esq. Judge, Zillah Moradabad, to *W. Jackson*, Esq. Register to the Sudder Dewanny Adawlut, North West Provinces, Allahabad.

Sir,

On the occasion of sales of land in satisfaction of decrees of court, it is usual for the collector, at the close of the sale, to report the same to the commissioner for confirmation, and also to give notice to the court of the sale of the estates; the commissioner having ascertained that there is no balance of government revenue due from the estate, confirms the sale. By Clause 2, Section 5, Regulation VII. of 1825, a period of one month is allowed to admit of any objections being offered to the sale, and it sometimes happens that the sales, which have in the meantime received the sanction of the commissioner are cancelled by order of the court. The confirmation of those sales by the commissioner, previous to any sanction from the court, appears to me inexpedient. The purchaser, on confirmation by the commissioner, has a right to immediate possession, and the collector is required to give it to him, unless otherwise directed by the court. In sales for decrees, the proper authority for confirmation should, in my opinion, be the court by whom the sale has been ordered.

2. The reversal of a sale where possession has been given involves a further inquiry regarding collections, and I would therefore suggest that the commissioners be instructed, through the Sudder Board of Revenue, to withhold their confirmation until the court notify to them the confirmation of the sale.

I have, &c.

Zillah Moradabad, Judge's Office, 20 April 1837.

(signed) *B. Tayler*, Judge.

(True copy.)

(signed) *H. B. Harington*, Register.

(True copies.)

(signed) *R. Machan*,
Officiating Register.

(No. 1073.)

From *R. D. Mangles*, Esq. Secretary to the Government of Bengal, to the Officiating Additional Secretary to the Sudder Board of Revenue, Fort William.

Sir,

27 Jan 1837, No. 276.
26 May 1837, No. 1490.

In transmitting the two accompanying letters, dated and numbered as per margin, from the register of the Sudder Dewanny Adawlut, for the report of the Sudder Board, I am directed by the Right hon. the Governor of Bengal to invite them to a reconsideration of the subject discussed in the minutes to which your letter of the 4th of April last gave cover.

2. The reason for which the Legislature of 1793 imposed upon collectors of revenue the duty of selling lands in execution of the decrees of courts of justice, is stated in the preamble to Regulation XLV. of that year to have been principally the security of the public revenue, "in cases in which portions of estates," (meaning actual lands, not a share or shares of a whole estate indicated by fractional parts of a rupee, representing the jumma,) "may be ordered to be sold." This reason, as the Board are aware, does not now exist. In consequence of the inconvenience and hazard to the revenue with which they were found to be attended, sales of specific portions of estates are no longer made, either for arrears of revenue or under awards of courts. In the former case the entire estate is now sold, without reference to the amount of balance due; and in the latter, the "rights and interests" of the person against whom judgment has been given are sold, without any further specification.

3. But for the reason above specified, which has now ceased to exist, his Lordship cannot think that the Legislature of 1793 would have transferred to the collector a part of the judge's duty, which it appears to him might be much more easily and simply transacted by the latter.

4. The

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4. The senior member, indeed, states that the proposed transfer "could not be put in practice with any due observance of the rules and safeguards which it would require, without entailing on the public officers, whose duties it would be to carry it into execution, infinitely more labour and time than is required to conform to the existing rules," because "the judicial authorities could not, with any hope of accuracy, prepare the papers for a sale of lands; viz. advertisement, lot-bundy, and account sale, &c. without the necessity for repeated reference to the collector's office and records, to say nothing of the great additional difficulties, embarrassments, and mistakes which would be necessarily incurred during the period the native judicial officers would be acquiring a knowledge of this duty." Mr. Pattle adds, that even collectors, with the aptitude they have acquired from long practice, and with the important advantage they possess of immediate reference to their records, often fall into errors and irregularities; and thence infers, that judges, who do not possess the same knowledge and facilities, will be liable to many more.

5. It appears to the governor, however, that in these arguments the entirely different nature of the property sold, and of the modes of proceeding consequently necessary at a sale for the recovery of arrears of revenue and at a sale under a decree of a court of justice, have been lost sight of. In the former there is, certainly, under the existing system, some complication of detail; in the latter, as far as his Lordship is informed, there actually is, and assuredly need be absolutely none.

6. In the first case, the revenue authorities are required to sell absolute zemindary property, as defined by the Regulations. The rules laid down are precise and numerous; the consequences of departure from them certain and unavoidable.

7. In the second case, the collector is required to sell by order of the civil court the "rights and interests" of *A.* in estate *B.* The rules are few and simple, and much is left to the discretion of the revising officer. Were the judge or his officer required to do in this case all that the collector does, some addition would certainly be made to his duties, but it would, in his Lordship's opinion, be a slight one, and not more than properly belongs to his office. Indeed, as observed by Mr. Smith, "all the real difficulties attending a sale for arrears of revenue, which form the subject of revision in the Revenue Department, either do not exist in sales under a decree, or are determined by the judicial officers themselves, even in the present state of the law." The collector is the mere instrument, and all that he does might, as far as the governor can see, be done without danger or inconvenience by the judge's nazir.

8. His Lordship is so far from thinking that the revenue officers derive any increase of influence (which Mr. Pattle contends to be the case) from acting in this purely ministerial capacity, and are able to use that influence for the better performance of their proper duties, that he considers it very desirable that they should be relieved from the task, in order that they may be enabled to attend to their strictly fiscal duties with less distraction and increased efficiency. If the duty of conducting these sales have any effect upon the collector's influence, his Lordship is inclined to think that it must be unfavourable, for that officer is placed by the present system in immediate subordination to the judge, and has sometimes, it is believed, to undergo animadversion from him. He has no discretion in the matter; must sell as he is ordered; and cannot even postpone a sale without the risk of incurring the objections of the judge. With all this the people must be necessarily well acquainted; and such functions cannot surely tend to increase a collector's influence.

9. Mr. Pattle remarks, that the duty of selling lands in execution of summary awards, for rent, has recently been transferred from the judicial officer to the collector, and thence argues that it would be inconsistent to transfer the duty of selling lands in execution of regular awards from the collector to the judges. But this argument appears to his Lordship to be founded in a misconception of the principle which dictated the Act (VIII. of 1835) alluded to, and which, rightly understood, is entirely favourable to the proposed transfer; for the object of the Act in question was to correct the anomaly of the law under which the collector passed the decree, and the judge alone was empowered to execute it by a sale of land. It is equally anomalous to require the judge to call upon the collector to execute his decree; and a regard for simplicity would dictate the application of the same remedy.

10. Lastly, Mr. Pattle thinks that the zemindars and other agriculturists would object

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object to the transfer of these sales to the civil court, and that such transfer would have a tendency "considerably to diminish the value of landed property." His Lordship does not see how the zemindars would be affected by the change, nor in what manner the transfer would tend to depreciate the value of estates, nor, consequently, why the landholders should object to a change of system upon this head; as the senior member has not stated the grounds of his apprehension, the governor would gladly receive a further exposition of the views of the Board.

11. Mr. Smith was in favour of the proposed transfer from the revenue to the judicial officer, but he considered it necessary to suggest many rules and safeguards for the protection of the interests of government, founded on the assumption that balances of revenue due to government are to be paid out of the proceeds of sales in execution of decrees of courts, previous to their appropriation to the objects for which such sales are effected.

12. As his Lordship sees insuperable objections to the principle of such a plan, he need not examine in detail the mode in which it is proposed to carry it into execution; for he cannot perceive that sales by a judge (whether mediately or immediately in execution of his awards) have any necessary connexion with either the revenue or the revenue authorities. The sale of property under judicial decrees seems to be, (with certain exceptions, which will be noticed in the sequel,) as far as the revenue authorities are concerned, a mere private transaction; and the governor is not aware that there is any argument, sound in reason or equity, justifying interference in this case which would not be equally valid in regard to all transfers. The real end of all the forms and safeguards alleged to be necessary is, his Lordship apprehends, to enable the collector to appropriate a portion, or the whole of the purchase-money, to the liquidation of the government revenue, if any be due; and this proceeding appears to be not only inconsistent with justice, but unnecessary for the object contemplated.

13. When *A.* sues *B.* in the civil court, to recover possession of an estate, and obtains a decree, and with it the property, the revenue authorities are under no apprehension in regard to the government revenue; they know that the security for the revenue is the estate itself, and that all parties are well aware of the lien, yet the property has changed hands in the same way as if it had been sold by auction under an award of court; strictly speaking, the cases are the same. In the one case the civil court transfers *B.*'s estate to *A.*, in the other the estate is, in point of fact, transferred to *A.*, and immediately sold by him to *C.* for the discharge of the debt of *B.* The transaction is not altered because *A.* instead of selling the estate himself in order to liquidate his debt, procures it to be sold through the medium of the judge. There is no reason, therefore, why any distinction should be made between the two cases; the sale consequent on an award of court should be looked upon as a private transaction. Because *B.* would not sell his estate to pay his debt to *A.* the judge interposes and sells it for him; but if *B.* had himself sold his estate, and paid *A.*, the collector would have had no reason to interfere. His Lordship does not see why the collector should interfere, because the medium of sale is altered.

14. If, then, a sale of this description be precisely the same as a private sale, and the duty of conducting it be intrusted to the judge, he will always inquire, as he now does, whether the debtor is in possession of the property declared by the creditor to belong to him. Having received from the collector such information as his registers supply, the judge will proceed to sell "the rights and interests" of the debtor in the property described. As soon as the sale is complete, he will inform the collector of the change of names, so as to enable that officer to register the name of the purchaser in the place of that of the debtor. If the debtor's name had not been previously registered, there will be no need to register that of the purchaser.

15. As to the purchase-money, the judge will, of course, pay over to the holder of the decree the amount of his award, and will either return the residue to the debtor, or dispose of it, as to him may appear just and proper.

16. Arrangements might easily be made for notifying to the assemblage at the time of sale, both the principle that the purchaser of a khalsa estate enters at once upon all liabilities of the seller, in relation to government, and with respect to that particular mehal, and the fact of the precise amount of balance due from the whole estate, leaving purchasers to ascertain shares. But when once the principle was understood, both precautions might be well omitted; as intending purchasers would satisfy themselves upon the latter score as a matter of course, exactly as with

regard

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regard to any other circumstance affecting the value of the property, and who would regulate their bids accordingly.

17. This plan, under which the sales of an estate for balances of revenue, and the sales of the rights and interests of individuals in an estate, in execution of a decree of court, would be kept, as they ought to be, entirely distinct, appears to his Lordship to be infinitely preferable to the practice which is understood frequently to obtain, and which is fraught with injustice, of applying the proceeds of a sale of the latter description to the liquidation, in the first instance, of the revenue due from the mehal sold, and of handing over the balance only to the holder of the decree.

18. By this course, in every case but the very rare one when the individual against whom execution has issued, is the sole proprietor of the estate sold, great injustice is done to both parties. The balance due from the whole estate is made to fall upon one coparcener, and where the difference is not sufficient to satisfy the demand of the decree holder, he is driven to a further process for the recovery of the remainder of his debt, or loses it altogether; under the system proposed by his Lordship of putting up the rights and interests of the debtor, burthened with his share of the unliquidated public demand, the creditor may expect to get exactly what the property of his debtor, subject to that prior lien, is worth. By the other plan, he only receives the difference between that value and the lien of government on the whole estate.

19. The law certainly warrants the proceeding objected to, because each sharer in a joint individual estate, is strictly answerable for the whole balance; and the necessity of the case, coupled with the consideration that any coparcener may at any time apply for a butwarra, justifies the rule. But there can be no good reason for acting upon it, to a breach of equity, when by a sale of rights and interests, subject to the government demand, the safety of the public revenue might be abundantly secured.

20. His Lordship is given to understand that many collectors, aware of the great hardship involved in the course above described, endeavour to avoid it when directed to sell the rights and interests of individuals in khalsa estates, in pursuance of awards of the courts, by advertising, in the first instance, the whole estate for its revenue balance; and then, if the balance is paid, by proceeding to the sale under the award.

21. This, which is at best but a clumsy expedient, will not be practicable when fixed days are appointed for the holding of periodical sales for the enforcement of the public demand in each district, as his Lordship hopes will shortly be the case; and even under existing circumstances, it opens the door to the obvious fraud upon the decree holder of his debtor buying his own estate under a fictitious name, and thus altogether baffling execution.

22. All this inconvenience and injustice would, in the opinion of the governor, be avoided by the simple plan of keeping the two cases of sale in satisfaction of judicial decrees, and sale for the realization of the government balances totally distinct.

23. But it appears necessary to the good effect of this plan, that the duty of conducting sales under awards of court should be transferred from the collector to the judge; so long as these sales are made by the same officer, who sells for arrears of revenue, it will be difficult, the governor thinks, to make the people comprehend that, as collector, he has no interest in, or connexion with the sales which he conducts by order of the civil court. The people do not generally, he apprehends, draw this distinction at present; they see the collector making both descriptions of sale, and this induces the erroneous conclusion that the effects are the same. But, were the duty transferred to the judge, there would be no hazard of such confusion; and the reason of the change in the law would at once be understood.*

24. The exceptions alluded to in paragraph 12 of this letter, as those in which the vigilance of the collector might be required for the protection of the interests of government are, firstly, when any property, khalsa or lakheraj, pledged to him in security

* In confirmation of this opinion, in regard to the existing confusion of notions, it may be noticed that a native gentleman, who wrote very ably in the public prints some years ago against the resumption laws, urged strongly that much lakheraj land had been bought by its present possessors "at collectors' sales" (in execution of decrees) under the impression, evidently, that such sales involved a recognition on the part of the revenue authorities of the validity, &c. &c. of the tenures so transferred.

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security for farmers, abkars, or others, is advertised for sale in execution of a decree of court; and secondly, where an estate, in balance beyond its own value, but the property of a wealthy individual, is in the same predicament.

25. As regards the first, his Lordship does not see that the collector would be in a worse position than he is, or ought to be at present, if it be provided that all advertisements for sales of land should be sent to his office; and if, as an additional safeguard, he furnish the vakeel of government with a list of all landed property hypothecated to him, and of the parties pledging it, in order that timely notice may be given of all suits in which such lands or parties are involved, and by which the security of government is likely to be affected.

26. The second case is an extreme one, but it is mentioned as one in which fraud might possibly be perpetrated. It must be the fault of the collector, however, if any estate is allowed to fall in balance beyond its value, and still more if he allowed time for the consummation of the supposed fraud; such a case need not be specially provided for.

27. A full consideration of the subject has led his Lordship to think that the repeal of Regulation XLV. of 1793, and such other laws as now prescribe that sales in satisfaction of decrees of the courts of judicature, should be made by collectors of revenue, is very desirable in point of principle, provided the change of system can be effected without any undue inconvenience, or a necessity for an increase of establishments; and that the courts should be empowered to sell all property in execution of their own decrees, after making all necessary inquiries in the collector's office. These sales when affecting landed property, whether khalsa or lakheraj, should be strictly confined to the rights and interests of all the debtors in such property, without any further specification.

28. Further, his Lordship inclines to the opinion that the collector should be debarred from all claims on the proceeds of such sales, on account of any demand of government upon the debtors, except when such demand is sanctioned by a decree of court, or when the specific property, or the general property of the party whose rights and interests have been sold, is specially hypothecated to government.

29. Under such a system there would, his Lordship believes, be no such injustice done as now, he apprehends, is often committed; and, after much deliberation, he cannot perceive that the government revenue would be placed in any jeopardy by its adoption; on the other hand, its simplicity and convenience would certainly be great. The early report of the Board upon the whole subject is requested.

I am, &c.

Fort William,
13 June 1837.

(signed) *R. D. Mangles*,
Secretary to the Government of Bengal.

(No. 1413.)

From *R. D. Mangles*, Esq. Secretary to Government of Bengal, to *R. Macan*, Esq. Officiating Register of the Sudder Dewanny Adawlut,

Sir,

Judicial Dep.

With reference to Mr. Reid's letters of the 18th March 1836, No. 629, and 27th January 1837, No. 276, and yours of the 26th May last, No. 1490, and their respective enclosures, I am directed by the Right honourable the Governor of Bengal, to request that will lay before the court the correspondence noted on the margin, with a request that they will favor his Lordship with their sentiments upon the question, as far as it relates to the department under their superintendence.

Copy of a letter to the Officiating Secretary to the Sudder Board of Revenue, dated 3d May 1836, No. 655.
Ditto - - from ditto, dated 4th April 1837, No. 143.
Ditto - - to ditto, in reply, of the present date, No. 1073.

I have, &c.

Fort William,
13 June 1837.

(signed) *R. D. Mangles*,
Secretary to Government of

(No. 1866.)

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, Esqrs. Judges, D. C. Smyth, Esq. Temporary Judge, J. F. M. Reid, Esq. Officiating Judge. No. 62, the 3d April 1837.

From *P. Tayler*, Esq. Deputy Register, Fort William, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

In continuation of Mr. Reid's letter, dated 27th January last, I am directed by the court to request that you will lay before the Right honourable the Governor of Bengal the accompanying copy of a letter from the officiating judge of zillah Cuttack, dated as per margin, and solicit his Lordship's early instructions on the same subject.

I am, &c.
(signed) *P. Tayler*,
Deputy Register.

Fort William,
30 June 1837.

(No. 62.)

From *H. V. Hathorn*, Esq. Officiating Judge, Zillah Cuttack, to *J. F. M. Reid*, Esq. Register to the Sudder Dewanny Adawlut, Fort William.

Sir,

I beg to transmit, for the opinion of the Sudder Dewanny Adawlut, copy of a letter from the commissioner of this division to the address of the collector of Cuttack, dated 10th September 1835, and also of the Persian Proceeding therein alluded to, directing the collectors in the division to discontinue the practice of submitting to that office for confirmation accounts of sales made in execution of decrees of court, such being deemed by the commissioner unnecessary to the validity of the sale, useless in form, and, with reference to the provisions of section 5, Regulation VII. of 1825, likely to lead to embarrassment.

2. I make the reference, being aware that in some districts public sales made by collectors, on whatever accounts, are not considered final until confirmed by the local commissioners.

3. The regulations in force do not, I believe, clearly lay down any positive rule for the confirmation of such sales, either by the commissioners of revenue or the judges of the court. In sales for arrears of revenue it is distinctly provided for, *vide* section 4, Regulation VII. 1830; but when made by the collectors in execution of decrees of court, the section quoted by the commissioner (clause 1, section 5, Regulation VII. of 1825), although it declares that the judicial authorities shall be competent to annul a sale in proof of irregularity, does not advert to the confirmation of sales where no irregularity has taken place.

4. In like manner, by section 16, Regulation XLV. of 1793, the courts are vested with the power of countermanding or postponing judicial sales about to be conducted by revenue officers, but no reference is made as to the necessity of a formal confirmation by either one authority or the other.

5. From the tenor of the Regulations, however, I would suppose that the commissioners' confirmation was requisite, after allowing one month from the date of sale for filing in the court petitions for objections, as per clause 1, section 5, Regulation VII. of 1825; for otherwise, if the local commissioner be not required to superintend the collector's proceedings or to be apprised of the result of the sale, I do not understand the necessity of transmitting to the collector through that officer the statements of lands belonging to the defendant, pointed out by the decree holder; and yet this is provided for by Regulation.

Sect. 2, Reg. XLV. 1793. Sect. 4, Reg. VII. of 1825.

6. Again, the more recent enactment of Regulation VII. of 1830, declares "that the local commissioners of revenue, with the concurrence of the Board, shall be competent to prescribe the conditions, in regard to the term and mode of making good the purchase-money, under which public sales shall be hereafter made; and this rule, it further provides, shall be applicable also to sales made in satisfaction of decrees of court."

7. From this it would appear that the Legislature had intended that the commissioners should regulate the proceedings of sale, held by the collectors in satisfaction of decrees of court, as well as on account of arrears of revenue.

8. For the reasons before stated, I beg to solicit the opinion of the Sudder Dewanny Adawlut on this point.

I have, &c.
(signed) *H. V. Hathorn*,
Officiating Judge.

Judges' Office, Zillah Cuttack,
3 April 1837.

(True copy.)
(signed) *P. Tayler*, Deputy Register.

No. 8.

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, Esqs. Judges, D. C. Smyth, Esq. Temporary Judge, J. R. Hutchinson and C. Harding, Esqrs. Officiating Judges.

(No. 3118.)

From *P. Tayler*, Officiating Register, Fort William, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

I AM directed by the court to acknowledge the receipt of your letter, No. 1413, dated the 13th June last.

2. In reply, I am desired by the court to forward to you the accompanying copies of the minutes recorded by the several judges upon the subject in question, and to request that you will lay the same before the Right honourable the Governor of Bengal.

I have, &c.
(signed) *P. Tayler*,
Officiating Register.

Fort William,
20 October 1837.

Mr. *Rattray*'s MINUTE.

I HAVE read and attentively considered the correspondence which accompanied this, and entirely concurring with the government in the view taken by them, (as exhibited in Mr. Secretary Mangles' letter to the Sudder Board of the 15th June last) of the question at issue, see no occasion to obtrude observations which would necessarily be the echo of what has already been set forth in support of the change which I would advocate adoption of.

28 August 1837. (signed) *R. H. Rattray.*

Mr. *D. C. Smyth*'s MINUTE.

1. THE object that the government have in view is to expedite the execution of judicial decrees without endangering the security of the public revenue.

2. The Right honourable the Governor of Bengal is of opinion that Regulation XLV. of 1793, and other sale Regulations may be safely rescinded, and the courts empowered to sell all property in execution of their own decrees, such sales being strictly confined to the rights and interests of the debtors in such property without any further specification.

3. I beg to observe that this subject was brought forward by Mr. H. T. Prinsep in September 1830, when he was specially deputed by government to investigate the causes of the delays that were alleged to have taken place in the execution of the decrees of the courts, and was duly reported on by this court in their letter to government under date the 8th June 1821, No. 53.

4. In the 56th paragraph of his report, dated 30th September 1830, Mr. Prinsep submits the following remarks regarding the uselessness of a reference to the Board of Revenue, observing very justly that the reference "is a mere form, that has no effect whatever beyond that of occasioning unnecessary delay."

5. "Para. 56. The question now to be decided by government is, whether it is at all necessary or expedient to fetter the courts in their mode of proceeding against a debtor's property, and to tie them down to any particular forms; if this be thought advisable, distinct rules might be laid down, either by a government Regulation or by some circular orders on the subject from the Sudder Dewanny Adawlut. It seems expedient that the necessity of a reference to the Board of Revenue prior to the sale of petty interests in land should be dispensed with, more especially when it may not be a government zemindaree that is proposed to be sold. In cases of minor importance, there can be no reason why the collector should not sell immediately on a requisition from the court, and perhaps small zemindarees even might safely be included in the more summary process above suggested, as in such the reference to the Board is a mere form that has no effect whatever beyond that of occasioning unnecessary delays."

6. In these remarks, and in the suggestions of the Right honourable the Governor of Bengal, as far as relates to the sale of lands held exempt from the public assessment by the courts, I entirely concur; and I would accordingly suggest that the courts be empowered to sell any portion of land held exempt from the public assessment, without application to the Boards of Revenue or to the collector of the district, or to any other officer in the revenue department.

7. To

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Sale in Execution of Decrees of Civil Courts.

7. To the plan, however, suggested in Mr. Secretary Mangles' letter of the 13th June last, of selling the rights and interests of the debtors in property under attachment without any further specification, I am altogether opposed. I believe such a system would give rise to much fraud or chicanery, as well as to serious affrays and disturbances. On this very subject Mr. Prinsep in the 57th and 58th paragraphs of his report observes as follows:—

8. "Para. 57. It occurred to me at one time, that much of the confusion experienced in this department of the business of the court was owing to the custom of suspending sales whenever claimants appeared, and I thought it might be preferable, in order to cut off the inducement which the debtor has under such a system to investigate evasive claims, that the sale of his interest should be made peremptorily before any inquiry takes place, under a declaration that the debtor's right and title only would be conveyed, and that any parties whose claims might be preferred before the day of sale, should be entitled to have their case investigated at the time of delivering over possession to the purchaser. This is pretty nearly the system under which sales are now made by the sheriff of Calcutta of lands lying in the mofussil; for if the mofussil authorities conceive them to have been at the time in the possession of a third person, they seldom cause them to be delivered to the purchaser; but, on the contrary, the latter is obliged to bring a regular action, in order to prove the right of the person whose interest was sold, to be superior to that of the claimant, whose temporary possession is considered proved."

9. "Para. 58. All the natives to whom I mentioned the plan of selling peremptorily, in the above manner, seemed to think that bidders would be few at such a sale, from the want of security to the purchaser, or at all events that the biddings would be confined to those immediately acquainted with the debtor's circumstances, that is, to his neighbours and relations, by means of whom collusive purchases would often be made in order to bear further process against the same property. The point is, however, one which well deserves consideration, and I am still by no means satisfied that the plan of immediate sale could not be preferable to that now in use. Even at present, the collector is obliged, for his own security, to give public notice that it is only the debtor's interest that he sells; and sometimes he suspends the sale on the appearance of claimants, notwithstanding that the judge has disposed of all the cases brought forward under the proclamation of the court. In fact, therefore, the sale is little better than it would be if immediately, in so far as the title conveyed at it is concerned; but the investigation by the court is a *primâ facie* award against any claims that may have been brought forward, and in addition to this assurance, the purchasers are now certain of obtaining possession by the means of the courts, a thing perhaps more looked to than the title itself."

10. My own experience enables me to say that the concluding remarks of the foregoing paragraph are exceedingly correct, and I have no hesitation in stating it to be my belief, that unless the purchasers were certain of being put in possession of their purchase by the courts, the property would sell for little or nothing; and unless a summary investigation into the claims of parties coming forward is made, it will be utterly impossible to put any purchaser in possession, as the decree holders in Bengal would, I have no doubt whatever, point out and attach property not only belonging to their debtors, but also to any person with whom they might be at enmity, merely for the purpose of involving him in a lawsuit.

11. With regard to the recession of Regulation XLV. 1793, and the other sale Regulations, and the plan of empowering the courts of justice to sell lands paying revenue to government in satisfaction of decrees without application to the revenue authorities, I must also, after much consideration, decidedly object.

12. It will, as is very justly observed by my colleague, Mr. F. C. Smith, establish two rival shops for the sale and purchase of property, and will, I believe, lead to infinite confusion and to much clashing of authority. A Patnee estate held under Regulation VIII. 1819, may be at the hammer at one and the same moment before the judge and the collector, the judge selling the property in execution of a regular suit under Regulation IV. 1793; the collector again selling it for arrears of revenue under Regulation VIII. of 1819. In short, I feel satisfied, however plausible this scheme may appear in theory, that in practice it will be a decided failure.

13. I have therefore to suggest that in replying to Mr. Secretary Mangles' letter

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letter of the 13th June, No. 1413, we inform the Right honourable the Governor of Bengal that the court is of opinion,

1st. That all lands held exempt from the public assessment may be sold by the civil courts of judicature in satisfaction of their own decrees, without any application to the revenue authorities.

2d. That all lands paying revenue to government and the subordinate tenures connected therewith, should continue to be sold at the requisition of the civil courts, in satisfaction of their decrees by the revenue authorities, under such an improved system of sale as the Sudder Board of Revenue may consider advisable; and,

3d. That the present regulations and rules of practice authorising a summary inquiry into the truth and foundation of claims preferred to any lands attached and advertised for sale be upheld.

14. In concluding this note, I beg to add a remark recorded by Mr. C. Smith on the 8th June 1821, when this subject was formerly under the consideration of the court, and which observation, I regret to notice, is equally applicable to the revenue authorities of the present day.

15. I object to any change in the law with respect to the sale of lands for decrees; the provisions of Regulation XV. 1793, Regulation XX. 1795, and Regulation XXVI. 1803, I think highly proper. It would be as well, however, if the revenue authorities were made to understand better than they seem to do the meaning of the words "*with all* practicable dispatch."

26 Sept. 1837. (signed) *D. C. Smyth.*

Mr. *Braddon*'s Minute.

Coinciding entirely in opinion with Mr. D. C. Smyth, it is unnecessary to add anything more.

(signed) *W. Braddon.*

Mr. *F. C. Smith*'s Minute.

It is now nearly ten years since I last held charge of a zillah court; and I feel, therefore, considerable diffidence in giving an opinion on a point of practice like the present. I recollect that the impression on my mind with regard to the sale of maufee lands and houses, &c., which was transferred to the Adawlut from the collector's office, shortly before I gave over charge of the last zillah court I had exercised jurisdiction in, was decidedly adverse to the change. I found the Dewanny courts had neither the records requisite for the duty to refer to with dispatch and facility, nor amlah acquainted with the details of revenue requisite to perform the duty without mistakes, nor amlah of respectability to perform the duty of auctioneers, and to give possession after the sale.

There is one objection which must strike every person who may peruse Mr. Mangles' letter, namely, that the system proposed of making the civil courts sell the lands for realization of decrees, will establish two rival shops for the sale and purchase of landed property. One, the revenue, must inevitably obtain a superiority over the civil, because there will be a certainty that a purchase made there is free from all government demands. That certainly cannot well exist in the civil auction room.

Moreover, it may well happen that an estate may be advertised and sold by both departments. What confusion such proceedings must produce I leave to conjecture.

On the other hand, the simplicity of Mr. Mangles' plan is certainly in favour of it; and if it could be arranged so that there shall be neither confusion, nor rivalry, nor delay, it would no doubt be advisable to adopt it. I do not attach much importance to the arguments about the dignity of the collector being injured by his subordination at sales of land to the courts. The people are accustomed to see him, hammer in hand, performing the duty of auctioneer, with all the usual flourishes and embellishments; but it will be a novel sight, and rather *infra dignitatem* to see a judge on the bench first pass a decree in a suit, and then descend to the auction box to sell estates to release the debt.

4 Sept. 1837. (signed) *F. C. Smith.*

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Mr. *Hutchinson*'s MINUTE.

I CAN perceive none of the difficulties anticipated by my colleagues in the proposed alteration of the process of sale of malgoozaree estates, but, on the contrary, believe that it will save much time, expense, and confusion. The collector at present is a mere auctioneer, under the orders of the civil court, which conducts all the necessary inquiries (summary) as to claims of property, &c. in the estate to be sold. Of course all the necessary information to be derived from the collector's office will be required and supplied previously to sale by the judge. By the present law the right and interest of the party against whom is issued process of execution, is all that is guaranteed by the selling officer, and the purchaser must regulate his bidding by his knowledge of the mehal, and the state of its proprietary title; in other words, he buys with his eyes open, and makes the bargain at his own risk. I agree, however, with Mr. F. C. Smith, that the duties of auctioneer, do not befit the dignity of the bench; indeed the nazir is now therefore always employed, and it is matter for consideration whether an officer receiving a salary of 25 or 30 rupees per month would be sufficiently trustworthy in sales of value and importance. I have long thought that the appointment of a respectable person, native or European, on a competent salary, would be of vast benefit to our mofussil courts for such duty, and the present occasion affords an opportunity of discussing the question.

I fully approve the proposed measure of empowering the civil courts to sell in execution of decrees landed property, whether malgoozaree or rent-free, without limit, subject to the provisions of Regulation VII. 1825, which I do not think can be rescinded.

2 October 1837. (signed) *J. R. Hutchinson.*

Mr. *Harding*'s MINUTE.

AFTER duly considering what has been urged for and against the subject discussed in the accompanying papers, I am of opinion that it no longer is necessary or desirable that the revenue authorities should be applied to for the purpose of selling estates in execution of judicial decrees. I doubt not but that this duty, under prescribed and judicious rules, can be and ought to be performed by some respectable and trustworthy officer of the court. It could never have been seriously contemplated to make an auctioneer of the judge; but it is nevertheless desirable that he should always be at hand, and near the room or other place in which sales are to be conducted. On commencing the new system, various frauds will doubtless be attempted, and in some instances serious depreciation of property will be experienced, and dissatisfaction ensue; this, however, will not last long, and will be more or less extensive according to the nature of the rules which may be established, and the manner in which they are carried into execution.

The provisions of Regulation VII. 1825 to be observed.

October 1837. (signed) *C. Harding.*

Mr. *Reid*'s MINUTE.

I SEE no objection to the plan proposed in the secretary's letter of the 13th June, provided that care be taken that the sales by the civil courts and by the collectors do not clash, and that the judges be not compelled to perform in person the office of auctioneers. The judges have no time to devote to this extra duty, as they have all now to perform the duty of commissioner in addition to their own. The duty of conducting sales should not, however, be left to the nazir, but should be entrusted either to the principal sudder ameen, or to a covenanted assistant, and this would be a good opportunity of re-urging on government the expediency of appointing covenanted assistants to the judges to relieve them of some of their duty.

I suppose it is intended by selling merely "the right and interest" of the person against whom the decree is given, that the Supreme Court practice of leaving the purchaser to institute a suit to get possession of his purchase is to be followed; if this plan be adopted, the execution of decrees will become more difficult than ever, for the property will be depreciated in value, and much more must therefore be sold to satisfy the demand.

16 October 1837. (signed) *J. F. M. Reid.*

(True copies.)

(signed) *P. Tayler*, Officiating Register.

No. 8.
Sale in Execution of Decrees of Civil Courts.

(No. 573.)

From *J. Dunbar*, Esq. Officiating Secretary, Sudder Board of Revenue, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of Bengal, Revenue Department, Fort William.

Sir,

Misc. Dep.

The Sudder Board of Revenue having had under consideration your predecessor's letter, No. 1073, of the 13th June last, regarding the transfer of the sales of lands in execution of decrees of court from the revenue to the judicial authorities, direct me to communicate as follows for the information of the Honourable the Deputy-governor of Bengal.

2. The senior and temporary members having paid earnest attention to the several arguments referred for their consideration, direct me to inform you that they do not see any reason to alter the opinions they have already expressed on this important question in their minutes bearing date the 22d June 1836.

3. Mr. Pattle observes, that selling the lands of recorded proprietors in execution of decrees (without first satisfying the demands of government) by the agency of the courts, is liable to the objections he has already urged; but that the litigation, fraud, and injustice that would be perpetrated consequent on authority being given to the courts to sell the rights and interests in zemindaries of individuals not recorded, and on the subsequent enforcement of such sales, would be not only extensive and endless, but would be productive of an immense increase of exactions, and very troublesome cases for the adjudication of the civil and criminal courts. He adds, that the Supreme Court even does not pretend to such a jurisdiction; for, although it sells rights and interests, by the agency of the sheriff, yet if resistance to the purchaser be offered, the sale is not enforced, but the purchaser is left to prove, by a regular suit, that the rights and interests in the estates belonged to the party on whose responsibility they were sold.

4. The temporary member also considers that, by the introduction of the proposed innovation, a door to considerable fraud and injustice would be opened, and that the loss which government would sustain would be great, inasmuch as although it may be practicable to recover the revenue due on estates by the sales of those estates when the balances are not heavy, it will be very difficult indeed to recover balances not realized in full by the sale of the estates on which they may have accrued, as well as all claims or security-bonds and other miscellaneous demands, including abkaree balances, which even under the present system can only be partially realized by means of great vigilance on the part of the revenue officers. There is no part of a collector's duty, he observes, more difficult than to realize balances due on miscellaneous accounts, and none on which he is more generally thwarted, as may be ascertained on a close examination of the khass mehal, and irrecoverable balance statements for the last five years.

5. Mr. Walters considers that a broad objection to the proposed measure is, that if it be carried into effect the courts will more than ever be resorted to by those who are indebted to the state, with a view to evade the collector's demand. It may be fairly inferred, he supposes, that a judge is always eager to execute his orders, and satisfy his decrees, and that a collector is as much so to collect his balances. Under the present system the collector acts as a check on the judge, for the judge cannot sell without applying to the collector, and informing him of what is going on. Let this restriction be removed, and the result will be, in the opinion of the temporary member, that fictitious claims and transfers, and benname purchases, supported by orders and decrees of court, will so abound, more especially in the courts of the largely empowered native judges, that there will be little chance of any recovery of the dues of the state.

6. Lastly, Mr. Walters observes that the only remedy, he sees, if the innovation be insisted upon, is the improvement of the sale and registry laws, and the giving to registered obligations a positive and practical lien on the property pledged, second only to the lien the land gives to the state in the recovery of its revenue balances, which should be more strictly upheld and enforced.

7. On the extent of the lien on the property of defaulters, which the law as it stands gives to the government, Mr. Walters embodied his sentiments at large, in a minute dated 30th May last, on a reference from the commissioner of Moorshedabad; and as this is a very important point, as connected with the present discussion, a copy of the minute is annexed at Mr. Walters' desire, for the consideration of government. But even then the balances due on estates sold would not,

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not, he thinks, be realized, unless the lien the law now gives in such cases is upheld and enforced.

8. The officiating member, Mr. Tucker, under the aspect and character given to the question in your predecessor's letter under acknowledgment, is disposed to concur in the view therein taken of it. He remarks, that were the present system to continue in operation, he would object to the transfer; but if government are prepared to alter the system, and to render sales made by the judges nothing more than private transactions between the parties, in as far as the government interests are concerned, the purchaser buying his lot with all its responsibilities, he cannot see the dangers that are apprehended by his colleagues.

9. Mr. Tucker concurs with his Lordship the Governor of Bengal, that the arrangement proposed would prevent much injustice both to creditor and debtor, which at present can scarcely be avoided; and it appears to him that in cases of land or other property pledged to any government officer as security, in which alone risk is apprehended, the government interests would be quite as much protected as they are at present, if the judges were required to send notice of every approaching sale to the collector one month before the day fixed for the sale. That period, together with another month after the sale, to allow of objections being offered previous to confirmation, will, in Mr. Tucker's opinion, afford the collector ample opportunity for opposing the sale, should he consider it necessary to do so; and as regards the risk and loss attendant on fraudulent transfers of property pledged in security of collusive decrees to evade responsibility, &c., to which the government is at present subjected, he thinks that they would not be increased by a change of the authorities by whom sales are to be made, provided the collector had due intimation of all intended sales.

10. With reference to the temporary member's observations, in paragraph 7 of this letter, the officiating member instructs me to state, that differing altogether in opinion with Mr. Walters on the subject of the extent of the lien held by government on the property of revenue defaulters, he had made notes for replying to that gentleman's minute, and was prevented embodying them in proper form only by his subsequent illness, and he has not since had leisure to resume the subject, but is prepared to do so if government desire it.

I have, &c.
(signed) *J. Dunbar*,
Officiating Secretary.

Sudder Board of Revenue,
Fort William, 14 November 1837.

MINUTE.

THE commissioner of Moorshedabad, under date the 18th February 1837, No. 287, reported that a sale of certain Patnee talooks, the property of Dergundernath Baboo, had been made in satisfaction of a decree, and that the collector had proceeded to carry the amount, *S. Rs.* 1,900, to the credit of government, in satisfaction of a claim of *Rs.* 5,371, outstanding against Dergundernath Baboo, on account of arrears of revenue of 1242 B. S. or Purgunnah Mundulghaut, the sale of which had fallen short by that sum of the demand of revenue due thereon.

On the right of the government to appropriate in the first instance, in payment of revenue demands, assets arising from sales made by collectors in satisfaction of decrees of court.

2. The Commissioner, however, considering this proceeding on the part of the collector to be "illegal and unjust towards the deereedars," referred the matter to the Sudder Board of Revenue.

3. The Board (Messrs. Pattle and Tucker, Mr. Walters dissenting) expressed their opinion, under date the 30th May, to the following effect, in opposition to their orders, issued in the same case, under date 25th April 1837, No. 58: "The Board concur with you in opinion, that the government has no right to appropriate, in liquidation of Mundleghat balances, the money realised by the sales of Patnee talooks, in satisfaction of Trenath Mullick's decree."

"But I am also directed to state, that if the collector had caused measures to be taken for the sale of the Patnee talooks in satisfaction of the claim of government on the proprietor previously to the decree being taken out, as it was his duty to to have done, the public interests would not have been sacrificed as they have been."

Government has, of course, a prior claim on an estate on which an arrear is due; but with regard to other property of the defaulter, it has only, all other circumstances being the same, an equal claim with other creditors, and it is therefore

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therefore particularly incumbent on a collector, when he finds that the claim of government is not satisfied by the sale of the estate in arrear, to institute a strict inquiry for other property of the defaulter, and to secure it, if any be forthcoming, on account of government before it be laid hold of by other claimants.

4. Now by Section 44, Regulation XIV. 1793, it is enacted, that "If the land subject to the payment of revenue to government belonging to any defaulting proprietor or farmer of land, any surety or purchaser of land, which may be sold under this Regulation, shall not produce a sum sufficient for the liquidation of the public demand, any other real or personal property which the defaulter may possess, is to be attached and sold to make good the deficiency, under the same rules as his lands subject to the payment of revenue to the government are directed to be sold, as far as the rules may be applicable to such property."

5. And by Section 14, Regulation III. 1794, it is further enacted, that, "If the whole of the lands of a proprietor shall be sold for the discharge of arrears of revenue, or any of the demands specified in Section 40, Regulation XIV. 1793 (tuccavy and the like), and the proceeds of the sale shall not be sufficient to make good the arrears; or if the lands of a defaulting proprietor shall be put up to sale, and no person shall offer to purchase them, in the first case, the person of the defaulter, and any personal property which he may possess, and in the second, his person and property of every description, shall be liable, for the balance, to the operation of all the rules regarding defaulting proprietors contained in Regulation XIV. 1793, &c."

6. Further, Clause 1, Section 3, Regulation XI. 1822, declares, "The Regulations of government having made the estates of proprietors, under engagements with government, primarily answerable by public sale for any arrear in the monthly payment of the revenue as defined in Section 2, Regulation III. 1794, and the property of all persons under stipulations with government, whether as proprietors for their own estates or as farmers or managers, and their sureties being likewise answerable for such arrears; it is hereby declared, &c. that collectors shall be entitled to have recourse to this process for the realization of any arrear or interest thereon, or other revenue demand that may be due from parties so under engagements, &c."

7. By Clause 3, Section 10, Regulation XI. 1822, it is also further enacted as follows:—

"Provided also, that no claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of government, nor any private demand or cause of action whatsoever, held or supposed to be held by a farmer or other engager against government shall be allowed to bar or in any way affect the right of government and its officers summarily to enforce the payment of public revenue by the sale of the lands or property of the person, so long as any part of the assessment for which such zemindar or other person aforesaid may be liable, shall remain undischarged."

8. Now it appears to me from the above provisions; 1st, That primarily all lands are hypothecated to government for the revenue assessed upon them; 2dly, That the real and personal property of all persons under stipulations with government, whether as proprietor for their own estates, or as farmers or managers or their sureties, and whether for arrears of revenue or interest, or other revenue demand, is hypothecated to the government in payment of the revenue due from them; 3dly, That the persons of defaulters are, on failure of assessments, liable to incarceration for revenue demands.

9. There is no distinction in the above provisions as to the decree of hypothecation, or the mode and power of enforcing the revenue claim, whether as arising direct on the land to be sold, or on other revenue demands.

10. And I maintain that the Regulations above quoted give the government a lien and claim on all real and personal property of revenue defaulters, which must be satisfied prior and in preference to any ordinary private claim.

11. By the provisions of Sect. 15, Reg. XLV. 1793, indeed, it is enacted, "That arrears or suspensions of revenue on lands sold in satisfaction of decrees of court, under that Regulation, if not stipulated to be made good by the purchaser, are to be paid from the proceeds of the sale."

12. It

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12. It has, consequently, been invariably the custom to act in all cases on the spirit of that Regulation, which makes no exception with respect to the deduction of arrears from the sale proceeds in cases in which the lands sold are other than those on which the balance occurred; and the accountant revenue department, in a circular order to the collectors, under date the 6th December 1833, called their attention to its due enforcement on all occasions.

13. The objections taken to the measure by Mr. Lowis are in his own words, as follows: "That beyond an indefeasible primary lien upon the land actually in balance, it appears to me that the law confers upon Government no peculiar right. The other property of its debtor is no doubt available for the realisation of the claim of the state; but I do not find that any priority of claim to such property is anywhere bestowed, and I therefore hold that the summary appropriation of funds which come into the collectors' hands by a process such as is above described, is altogether objectionable, being, as it appears to me, both illegal and unjust.

"I beg to submit a doubt whether, even when an arrear of revenue is due from the property sold in satisfaction of a decree, it be legal to realise the said revenue from the proceeds of such sale.

"The orders of the accountant of the 6th December 1833 appears to me erroneous, as having reference to a different state of things. Under the old law, to which he refers, Sect. 15, Regulation XLV. 1793, a positive property was sold, and the realisation of the revenue from such property from the sale proceeds was of course unobjectionable.

"He overlooks the circumstance that a positive property is now never sold in satisfaction of a decree, and that Regulations XIV. 1822, and VII. 1825, have entirely changed the complexion of both kinds of sale."

14. In his further letter of the 3d May, No. 637, Mr. Lowis observes:

"This letter now under reply, refers only to cases of sale in satisfaction of decrees, in which the revenueof the land sold is in arrear. Sect. 15, Regulation XLV. 1793, referred to in paragraph 7 of my letter, and now quoted by the Board, directs the deduction from the sale proceeds of the arrear of revenue due from the land sold, the practice then being to sell a specific portion of land, the revenue of which was distinctly ascertained; and I argued, that as specific portions of land were now not sold in satisfaction of decrees, the means of executing the law of Sect. 15, Regulation XLV. 1793, was in fact not in our power, and that the pretence of still acting on this impossible law involved gross and flagrant injustice."

15. Mr. Lowis's objections to the present practice are in fact, it will be observed, founded on his own opinion as to what the law ought to be, not upon the law as it stands. Now, I maintain, that by the law as it stands, the government have a prior lien upon all the property, real and personal, of the defaulter, whether the balance has accrued upon the lands to be sold or not, and that such has been the invariable construction put upon the above Regulations, and which has justified the practice of the revenue authorities.

16. The law is so clear with respect to balances accruing on the land to be sold, Sect. 29, Regulation XI. 1822, declaring the land to be perpetually hypothecated to government for the revenue, and that no claim of right founded on any act of the original engager or his representative, &c. shall be allowed to impugn the right of government to make the sale, &c. that Mr. Lowis' doubt cannot for a moment be entertained; indeed, he appears himself to have relinquished it in his second letter.

17. Mr. Lowis's assertion that a positive property is now never sold in satisfaction of a decree, and Regulation XI. of 1822, and VII. of 1835, have entirely changed the complexion of both kinds of sale, does not appear to me to be borne out by the fact.

18. For Regulation XI. of 1822 is a Regulation for the conduct of sales for arrears of government revenue, only making no allusion to proceedings of the civil courts except in the penultimate section, which declares government not liable for their errors; and Regulation VII. of 1825, which continues in force as the law under which sales in satisfaction of decrees of court are conducted, empowers indeed the civil courts to sell houses, gardens, orchards, and small parcels of lakheraj land, but leaves the sale of malgozaree lands, as before, in the hands of the collector under the provisions of Regulation XLV. of 1793, which, with respect to such sales, it scarcely modifies. Moreover, Clause 3, Section 4, Regula-

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tion VII. of 1825, authorises the collector to select for sale any part of the lands contained in the (judge's) statement, which it may be most convenient to sell in execution of the decree or other process.

19. I do not therefore see the application of the remarks in paragraph 2 of Mr. Lowis' letter, No. 687, or paragraph 7 of his letter, No. 278, or understand how he makes it out that positive property cannot now be sold, or that the whole complexion of the sale laws is changed.

20. If it is Clause 7, Section 4, Regulation VII. 1825, which enacts that nothing is guaranteed to bidders beyond "the rights and interests" of the individuals answerable for the amount of the decree, to which Mr. Lowis means to take exception, I would then ask him whether it would not involve "gross and flagrant injustice" to guarantee to purchasers "rights and interests" which did not belong to the individuals answerable for the amount of the decree? *

21. Section 29, Regulation XI. 1822, it is true, makes a distinction between, and defines the rights conveyed by sale in cases where an estate may be sold for arrears accruing on another mehul as contradistinguished from the rights conveyed where an estate may be sold in recovery of the revenue assessed upon it; and it seems to me, that it is from this limitation of the rights conveyed by the sale in the former instance, that an inference has been drawn limiting and impugning the right to sell, and the powers and incidences of sale as conferred by the Regulations on the government.

22. Now though the rights and interests only of defaulters, in cases where the arrear has accrued on other than the lands to be sold, are liable to sale by government, being the same in this respect as in sales in satisfaction of decrees, still the prior lien, general if not specific, which the Regulations confer on the government revenue demand, are not annihilated by the equality in this respect; and to maintain that the mere presentation of a petition to the judge, praying for the sale of the property of the person against whom a decree for the amount of a simple contract bond may have issued, or its actual sale on a summary order of the judge in consequence, is sufficient to bar the prior right of government, which is unlimited as to time, to a satisfaction of its demand from the defaulter's assets wherever and whenever available, even in part, (for Mr. Lowis would assign the whole in satisfaction of the decree,) is to give to such parties a privilege which the law does not warrant, and to deprive the government of a privilege which the law does warrant.†

23. If a decree should have issued assigning a government defaulter's property to his creditor in satisfaction of a mortgage security or the like, previous to any enforcement of the claims of government against the same property, then of course, as the rights of the defaulter would have been already assigned over and barred in that property by competent authority, there would be no "rights and interests" of the defaulter left therein, wherewith to satisfy the government demand.

24. When the government entered into contract with its malgoozars, it is stipulated that all their property, real and personal, should be answerable for the assessed revenue. When the creditor lent his money on a simple contract bond at an exorbitant rate of interest, he made no such contract, and took no such collateral security from his debtor. This is the position of the parties, and the lien of the former cannot be annulled by any act of the latter.

25. It is incumbent undoubtedly upon collectors to take immediate measures for the enforcement of the demands of government, and it has been the knowledge that the government possessed a prior lien which has probably been the main cause of delay in the enforcement of such claims.

26. To

* The thing justly liable to sale is, in fact, exactly the same now as before; viz. the property of the debtor. But, under the former process, property was often pointed out by the creditor, and exposed for sale, which proved not to be the property of the debtor. To avoid this injustice, and the litigation it gave birth to, the rights and interests of the party in the property specified only were guaranteed at the time of sale. If he possessed no positive property in the thing sold, no legal title could evidently be conveyed either under the former or present process.

† By construction of the Sudder Dewanny Adawlut, dated 9th September 1836, parties holding decrees divide assets rateably. The revenue claims of government cannot surely, at all events, be placed in a worse position than a decree holder who has not sued out attachment? In England the King's "broad arrow" overrules all claims.

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26. To sell first the rights of the debtor in satisfaction of the decree, burdened with the claim of revenue, as suggested in paragraph 7 of Mr. Lowis' letter, as below,* and then to sell the property again in satisfaction of the government demand, would be an awkward expedient †. Who would buy to-day a property liable to be sold to-morrow? And if a man should buy with the intention of making good the government demand, there can be no question that the price he would offer under such circumstances, would be much less than the sum the estate would otherwise fetch, less amount to be paid to government, so that the change of the system would be anything but advantageous to the interests of the debtor.

27. There can be do doubt, and my own experience has abundantly taught it me, that the civil courts view with jealousy, and are sometimes not backward to thwart the proceedings of the revenue authorities, and that they are not unfrequently resorted to for the purpose of being played off against government revenue demands; and the present case shows that even revenue commissioners may be found to support their pretension.

28. With our present system of native judges then, a system rapidly progressing, who are at liberty to execute their own decrees, there can, in my opinion, be no question that the revenue interests of government will be very materially injured unless the prior and indefeasible lien of the sale on the property, real and personal, of all malgoozars, is jealously maintained, and the courts are barred from filching from the collectors, on the plea of satisfaction of decrees, real or fictitious, assets in their hands which ought to be carried to the credit of government. Further, to allow the civil judges to sell malgoozaree lands in satisfaction of decrees without reference to the collectors, would, I am convinced, soon lead to such a loss of revenue as would speedily render a remedial law absolutely necessary.

29. I submit then it would be far wiser to prevent the evil by not removing the conduct of sales from the hands of the collectors, as recommended in our new draft of a sale in satisfaction of decree law, and by distinctly upholding and enforcing the prior lien of government on all property "or rights and interests" of defaulters, real and personal, introducing an explanatory provision to this latter effect in the new law referred to if considered necessary.

Sudder Board of Revenue,
Fort William, 30 May 1837.

(signed) *H. Walters,*
Sudder Board of Revenue, Fort William,
14 November 1837.

(True Copy.)

(signed) *J. Dunbar,*
Officiating Secretary.

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* "It appears to me that the more correct method of procedure, one more in accordance with the true principles of our revenue system, would be to sell, as we nominally do, the actual rights of the debtor in the land, burthened of course with the claim for revenue, to pay the whole proceeds of such sale over to the civil court, and then to sell the estate, if need be, to realise the revenue, just as if no sale in satisfaction of a decree had taken place."

† This could only be made applicable to the case of balances accruing on the land to be sold, where the claim is on the land itself; but in such cases Mr. Lowis does not deny the indefensible hypothecation to government; so that the remedy, as far as Government is concerned, is a remedy for an evil which is non-existent. In all other cases where the claim is on the defaulter personally, as the sale in satisfaction of the decree would also lately transfer the defaulter's rights and interests in the property sold, the government would be absolutely without a remedy; the claims of the state could not be satisfied.

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Legis. Cons. 29 March 1841. No. 3. Enclosure.

(No. 2,406.)

From *F. J. Halliday*, Esq. Officiating Secretary to Government of Bengal, to *J. Hawkins*, Esq. Officiating Register of the Sudder Dewany Adawlut.

Sir,

I AM now directed by the Honourable the Deputy-governor of Bengal to acknowledge the receipt of Mr. Taylor's letter, No. 3,118, to the address of my predecessor, dated the 20th October last, submitting copies of minutes recorded by the several judges of the Sudder Court, in the question transferring the sales of lands in execution of decrees of court from the revenue to the judicial authorities.

2. As the majority of the judges have expressed their concurrence in the projected alteration of the system at present in force, his Honor requests that the Court will prepare and submit the draft of an Act to give effect to the measure contemplated.

3. An original letter, No. 573, from the officiating secretary to the Sudder Board of Revenue, dated the 14th ultimo, containing the sentiments of the members of that Board on the above subject, is herewith transmitted for the information of the Courts. You are requested to return the document when no longer required.

I am, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to Government of Bengal.

Fort William, 5 December 1837.

(No. 740.)

From *J. Hawkins*, Esq. Register of the Sudder Dewany Adawlut, to *F. J. Halliday*, Esq. Officiating Secretary to Government of Bengal, Judicial Department.

Sir,

Sudder Dewany Adawlut.
Present:
R. H. Rattray, W. Braddon, esqrs., judges,
W. Money and J. R. Hutchinson, esqrs., temporary judges.

IN conformity to the instructions conveyed in your letter, No. 2,406, dated the 5th December last, I am directed to transmit the accompanying draft of an Act empowering the courts of civil judicature to sell landed property in execution of decrees.

2. His Honor will observe, that the draft might have been rendered much more brief by merely declaring that the civil courts should be vested with the power which it is now proposed to confer upon them; but the Court have deemed it the preferable plan to embody the entire subject with its details into one Act.

3. The enclosure of your letter is herewith returned, a copy having been kept for the use of the office.

I have, &c.
(signed) *J. Hawkins*, Register.

Fort William, 16 March 1838.

I. IT is hereby enacted, that from the—— Regulation XLV. of 1793, and XX. of 1795, and such parts of Regulation XXVI. of 1803, and VII. of 1825, of the Bengal Code, and of any other Regulation or Act in force as relate to the sale of landed property of any description in satisfaction of decrees of the courts of civil judicature, or in execution of any other judicial process, shall be repealed.

II. And it is hereby enacted, that the courts of civil judicature within the territories subject to the presidency of Fort William, in Bengal, shall be empowered to sell, or to cause to be sold, lands of every description, in execution of any decree or judicial process; provided however, that whenever the judges of the zillah and city courts, and the principal sudder ameens, shall employ their nazirs in conducting any sale, the judges, or the principal sudder ameen, as the case may be, shall personally superintend their nazirs while so employed. Provided also, that whenever the sudder ameens or moonsiffs shall have to conduct any sale, they shall be required to conduct such sale themselves.

III. And it is hereby enacted, that in cases of execution of a decree of court, on receiving from the decree holder a statement of the land or lands belonging to the

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the debtor, or other person against whom execution has been taken out, together within an application for the sale of such property, the court to whom such application is made shall, if necessary, apply to the collector of land revenue, for the purpose of ascertaining whether the debtor or other such person aforesaid is the recorded proprietor of the whole or any portion of such property, and for such other information regarding such property as may be necessary to enable the court to prepare the sale papers; and the collector of land revenue shall be required to reply to all such applications, and afford all such information as the records of his office may enable him to do.

IV. And it is hereby enacted, that in the event of its appearing that the debtor or person aforesaid is not a recorded proprietor of the whole or any portion of such property aforesaid, the court before which the decree is in course of execution shall not be thereby barred from making such further inquiries as may be necessary for the purpose of ascertaining whether the debtor or other such person aforesaid be the proprietor of the whole or any part of such property aforesaid, nor from proceeding to sale should such appear to be the case.

V. And it is hereby enacted, that whenever a zillah or city judge, or principal sudder ameen, or sudder ameen, shall have determined to bring to sale any land or lands in execution of any decree or judicial process, the court shall cause a copy of a notice to be fixed up for 30 clear days before the day of sale, in the court-house, and shall send a copy of such notice to the collector of land revenue, or other officer in charge of the office of collector, to be fixed up in his kutcherry for the same period, and shall also send a copy of such notice to the moonsiff in whose jurisdiction the estate may be situated, to be fixed up in the cutcherry of such moonsiffs for 20 clear days before the day of sale.

VI. And it is hereby enacted, that whenever a moonsiff shall in like manner proceed to the sale of any land or lands, he shall cause the requisite notice to be fixed up for 30 clear days before the day of sale in his cutcherry, and shall send a copy of such notice to the judge, and another copy to the collector of land revenue of the city or zillah, to be fixed up in their cutcherries for 20 clear days before the day of sale. Provided that no court shall sell lands situated within the jurisdiction of another court, but shall forward a requisition for the sale of such property to the court in the jurisdiction of which the lands are wholly or chiefly situated.

VII. And it is hereby enacted, that such notice shall be written in the vernacular language of the district, and that such notice shall specify the land or lands in which the rights and interests of the debtor are proposed to be sold, the place and day fixed for the sale, and the jumma of lands paying revenue to government, payable annually, for such land or lands.

VIII. And it is hereby enacted, that all sales shall be made at the place and time specified in the advertisement; provided, however, that in cases of execution of a decree of court, it shall be competent to the court ordering or conducting the same to postpone the sale for any good and sufficient cause to be recorded on the proceedings of sale; provided also, that notice of such postponement be given at the time by proclamation in open court, and by noting the same at the foot of the notice first issued; but if the postponement exceed one week, a fresh notice shall be issued in the sudder kutcherry and in the mofussil.

IX. And it is hereby enacted, that when the bidding shall commence, it shall be the duty of the officer conducting the sale to receive the bid of every one without inquiry; but prior to knocking down the lot and concluding the sale, he shall call upon the person who may have made the higher offer, to make a deposit of 15 per cent. on the amount bid.

X. And it is hereby enacted, that if the person who may have made the last offer shall not, when called upon, forthwith tender the prescribed deposit, the officer conducting the sale shall be at liberty to reject the bid, and to put up the lot again at the amount of the next highest bid. The person who may have made such offer shall have the benefit of his bid, and be allowed to maintain it by tendering the required deposit, if no higher offer shall be made, and on his failure to do so the officer conducting the sale shall be competent to have recourse to the next highest bidder; provided, however, that it shall at all times be competent to the officer conducting the sale, at his discretion, to commence the sale of the estate *de novo*, instead of concluding the sale with the next highest bidder.

XI. And it is hereby enacted, that any person bidding at a public sale held by order of court, who upon being called upon to conclude his purchase, and lodge the

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the prescribed deposit may be unable, or may refuse to do so, shall be deemed guilty of contempt of court, and be punishable by a fine not exceeding 100 rupees, if the sale be held by order of a zillah or city judge, or principal sudder ameen; not exceeding 50 rupees, if conducted by a sudder ameen or moonsiff; and in default of payment of the fine ordered to be levied by any of the aforesaid authorities, he shall be committed to the civil gaol of the district until the fine is paid, or for a period not exceeding one month.

XII. And it is hereby enacted, that the entire amount of the purchase-money shall, in all cases of sale held under the provisions of this Act, be made good by the tenth day from the day of sale; and that if the whole sum, including the amount deposited, be not made good before noon that day, it shall be competent to the court to cancel the sale, to advertise the property for resale, and to declare the deposit to be forfeited, the amount of such deposit being regarded as a part of the proceeds of the sale.

XIII. And it is hereby enacted, that when a sale of land held under the provisions of this Act shall have been completed, the court, by the immediate order or by the instrumentality of which the sale was made, shall proceed to put the purchaser in possession of the land or lands sold to him, by delivering to him the usual bill of sale and ummulnamah, and by causing a notice to be issued on the spot, certifying the fact of the sale of the rights and interests of the debtor to the purchaser.

XIV. And it is hereby enacted, that when a sale of land under the provisions of this Act shall have been completed, and application shall be made, it shall be the duty of the collector of land revenue to cause entries of the transfer to be made in the public registers, according to the description of property transferred, in the manner prescribed by the regulations in force.

XV. And it is hereby enacted, that the proceeds of sale shall be made over to the decree-holder, after deducting one per cent. from the amount of proceeds, to be carried to the account of Government for the purpose of meeting the expense of any extra establishments which it may be necessary to maintain for giving effect to the provisions of this Act: provided, however, that if any surplus shall remain, after paying to the decree-holder the amount of his claim, and deducting a commission of one per cent. as aforesaid, such surplus shall be paid to the former proprietor of the land sold.

XVI. And it is hereby enacted, that arrears of rent or revenue, on account of land sold under the provisions of this Act, that may be due to the former proprietor from his dependant talookdars, under farmers or ryots, preceding the date on which the lands may be sold, shall belong to him, and shall be recovered by him by a regular or summary civil suit, as the case may be.

XVII. And it is hereby enacted, that in the event of any claim being preferred to the property advertised for sale, or any objection being offered to the proposed sale within the period of the proclamation, such claim or objection shall be inquired into by the judge or other officer who may have ordered the sale; and if it appear necessary, the time of sale shall be postponed till such claim or objection have been investigated, provided that the representation of it (which shall in all instances be preferred to the judge or officer ordering the sale as soon as practicable after the publication of the intended sale) shall not appear to have been designedly and unnecessarily delayed, with a view to obstruct the ends of justice. In such cases, when the fraudulent design may appear evident, the sale shall not be postponed, and the claimant shall be left to prosecute his claim after the sale by a regular civil suit.

XVIII. And it is hereby enacted, that if on the presentation of a petition, (written on the stamped paper required for miscellaneous petitions in the zillah and city courts,) within one month after any sale, and on a summary inquiry into the allegations contained therein, it shall appear that any material irregularity, at variance with the rules herein prescribed, or with any other rule or regulation in force, has occurred in the conduct of such sale, in such case it shall be competent to the court by which, or by order of which, such sale was effected, to cancel the same, and to direct a return of the purchase-money with or without interest, as in each instance may appear proper.

XIX. And it is hereby enacted, that all orders passed under this Act shall be open to a summary appeal, agreeably to the general rules in force for such appeals.

XX. And it is hereby enacted, that if in cases of execution of a decree of court the

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the party whose land may have been sold, or other person claiming a right therein, shall desire to contest the sale, it shall be competent to him to institute a regular civil suit for that purpose.

XXI. And it is hereby enacted, that the statement of land required under section 3 of this Act shall specify any property of the nature of a putnee talook, described in Regulation VIII. of 1819, of the Bengal Code, or any share of an undivided estate, without specifications of the lands composing such share, or any other description of right or title to or interest in land, it shall be competent to the courts to dispose of such property, under the rules provided for in this Act, so far as they may be applicable to each case.

XXII. And it is hereby enacted, that in all cases of public sale of property under the provisions of this Act, nothing shall be considered to be guaranteed to the purchaser in the property sold beyond the rights and interests therein of the individuals answerable for the amount of the decree in execution of which the sale is made.

XXIII. And it is hereby enacted, that in cases of lands paying revenue to the government, nothing contained in this Act shall be construed to interfere in any way with the claim of the government to arrears of revenue due for any period antecedent to the date of sale, or with its right to realise such arrears by sale of such lands, in the same manner as if no such sale or transfer had taken place.

(signed) *J. Hawkins*, Register.

(No. 648.)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of Bengal, to *J. Hawkins*, Esq. Register of the Sudder Dewany Adawlut.

Sir,

Judicial Dept.

I AM directed by the Honourable the Deputy-governor of Bengal to request that you will move the Court's attention to the second paragraph of my letter (No. 2406), dated the 5th December last. His Honor awaits the receipt of the draft Act therein alluded to, with which you will be pleased to return the original letter from the Officiating Secretary to the Sudder Board of Revenue, forwarded to you with my letter above cited.

I am, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government of Bengal.

Fort William,
20 March 1838.

(No. 1007.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Sud. Dewany Adawlut.
Present:
R. H. Rattray,
W. Braddon,
N. J. Halhed, esqrs. judges.
W. Money,
J. R. Hutchinson, esqrs. temporary judges.

IN reply to your letter, No. 648, of the 20th ultimo, I am directed to state that the draft therein required was forwarded with my letter, No. 740, of the 16th idem.

I am, &c.
(signed) *J. Hawkins*, Register.

Fort William,
14 April 1838.

(No. 1928.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to Government of Bengal, Judicial Department.

Sud. Dew. Adawt.
Present:
R. H. Rattray,
W. Braddon,
N. J. Halhed, esqrs. judges.
W. Money and J. R. Hutchinson, esqrs. temporary judges.

Sir,

I AM directed to request that you will submit, for the consideration of his Honor the Deputy-governor, the accompanying copy of a * letter addressed by the register of

* No. 789, dated 15th ult.

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of the Sudder Dewany Adawlut, North West Provinces, to the secretary to the Right honourable the Governor-general, in the Judicial Department, on the subject of the transmission of translates of decrees to the revenue authorities, under the provisions of Section 16, Regulation XXVI. 1803, (Section 2, Regulation XLV. 1793, for the Lower Provinces,) and, with reference to the second paragraph of Mr. Harrington's letter, to suggest as the most advisable alternative a modification of the law which renders such translations indispensable.

I am, &c.

Fort William, 6 July 1838. (signed) *J. Hawkins*, Register.

(No. 789.)

From *H. B. Harrington*, Esq. Register, to *J. Thomason*, Esq. Officiating Secretary to the Right Honourable the Governor-general, in the Judicial Department, North West Provinces.

Sir,

Sud. Dew. Adawt. N. W. P.
Present:
M. H. Turnbull,
A. J. Colvin,
W. Lambert,
W. Monckton,
B. Tayler, esqrs. judges.

WITH reference to the correspondence noted in the margin *, relative to the modes and form of address to be observed by the native judicial functionaries, when corresponding on matters of business with the covenanted officers of government and natives of rank, I am directed by the court to forward to you, for the purpose of being submitted for the consideration and orders of the Right honourable the Governor-general, the accompanying copies of the two letters from the judges of Ghazeepore and Azimghur, from which it will be perceived that the commissioner of the Benares division declines to receive communications direct from the principal sudder ameens of those zillahs, unless accompanied by an English letter, with which requisition it is not in the power of those officers to comply, in consequence of their not being acquainted with that language; a copy of a letter on the same subject, subsequently received from the commissioner of the Allahabad division, is also annexed for his Lordship's information.

2. With regard to applications for the sale of lands paying revenue to government in satisfaction of a decree of court, the court direct me to observe, that Section 16, Regulation XXVI. of 1803, expressly requires the court by which the decree is to be enforced to transmit a copy of the same, with a translate of it in English, to the Board of Revenue, whose powers as regards sales of land in execution of decrees have been transferred by subsequent enactments to the commissioners of revenue; under these circumstances the court observe it will be necessary either that the law as above quoted should be modified, or, as respects this particular class of cases, that the applications of the principal sudder ameens should continue to be forwarded, as heretofore, to the commissioner of revenue, through the zillah judge; though, as noticed by Mr. Heyland, this will tend in some measure to defeat the object contemplated in the arrangement which has given rise to the present reference.

3. With regard to other applications, which the law may not require to be accompanied by any English correspondence, the court would suggest that the necessary instructions be issued to the revenue authorities in these provinces, informing them that the principal sudder ameens have been expressly authorised to correspond direct, on matters of business connected with their office, with all covenanted officers of government, with the exceptions specified in the court's circular letter of the 1st December, issued from this office on the 9th February last, a copy of which was duly submitted for the information of the Right honourable the Governor-general.

4. On the subject of the remaining part of Messrs. Heyland's and Cartwright's letters, regarding the certificates which the principal sudder ameens are required by the circular orders of the 23d February last to forward with their returns to the court's precepts, the court propose to communicate with the Calcutta court.

I have, &c.

Allahabad, 15 June 1838. (signed) *H. B. Harrington*, Register.

(True copy.)

(signed) *J. Hawkins*, Register.
H. B. Harrington, Register.

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* Letter to Government, with Enclosure, dated 5th January 1838.
Reply from ditto, dated 31st July 1838.

No. 8.
Sale in Execution of Decrees of Civil Courts.

(No. 1593.)

From *J. H. Young*, Esq. Deputy Secretary to Government of Bengal, to *E. Currie*, Esq. Secretary to the Sudder Board of Revenue.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to request that you will lay before the Board the accompanying copy of a letter from the register of the Sudder Dewany Adawlut, dated the 6th ultimo, No. 1928, and of its enclosure, for their report whether there be any objection to dispensing with a translation of the decrees which the courts of justice are required by Section 2, Regulation XLV. of 1793, to transmit to the revenue authorities. Judicial Dept.

I am, &c.

Fort William, 14 August 1838.

(signed) *J. H. Young*,
Deputy Secretary to the Government of Bengal.

(No. 1693.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Officiating Secretary to Government of India, in the Legislative Department.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to forward to you, for the purpose of being laid before the Government of India, for consideration and orders, the accompanying copy of a letter from the register of the Sudder Dewany Adawlut, dated the 16th March last (No. 740), and of the draft of a proposed Act for empowering the courts of civil judicature to sell landed property in execution of decrees. Judicial Dept.

I have, &c.

Fort William, 28 August 1838.

(signed) *J. H. Young*,
Deputy Secretary to the Government of Bengal.

(No. 489.)

From *E. Currie*, Esq. Secretary, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Revenue Department.

Sir,

IN reply to your letter (No. 1593) of the 14th instant, I am directed to state, for the information of the Honourable the Deputy-governor, that it is the opinion of all the members of the Sudder Board, that there exists no objection to the rescission of Sect. 2, Regulation XLV. of 1793. Miscellaneous Dep.

Present:
J. Pattle, esq.
C. Tucker, esq.
R. D. Mangles, esq.

2. The officiating and temporary members, however, would suggest that this question must necessarily be disposed of in the contemplated enactment for transferring the duty of holding sales in satisfaction of decrees from the revenue to the judicial authorities, and they beg permission to urge upon the Government the expediency of early legislation on the subject.

I have, &c.

(signed) *E. Currie*,
Secretary.

Sudder Board of Revenue, Fort William, 28 August 1838.

No. 8.
Sale in Execution of Decrees of Civil Courts.

(No. 1772.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Officiating Secretary to Government of India, Legislative Department.

Sir,

Judicial Dept. I AM directed by the Honourable the Deputy-governor of Bengal to forward to you the accompanying copies of letters noted in the margin*, on the subject of modifying the provisions of Section 2, Regulation XLV. of 1793, and Section 16, Regulation XXVI. of 1803, in order to the dispensing with the translation of decrees which the courts of justice are required to transmit to the revenue authorities, and to request that you will lay the same before the Supreme Government for consideration and orders.

I have, &c.

Fort William, 4 Sept. 1838. (signed) *J. H. Young*,
Deputy Secretary to the Government of Bengal.

(No. 153.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to Government of Bengal.

Sir,

Legislative. I AM directed by the Honourable the President in Council to acknowledge the receipt of your letters, dated respectively the 28th of August 1838 (No. 1693), and the 4th of September 1838 (No. 1772), with the copies of papers enclosed with each.

2. In reply to the first-mentioned letter, I am desired to inform you that the draft Act therein submitted appearing to his Honor in several particulars to be objectionable, he is of opinion that an Act containing a brief declaration, such as is referred to at the beginning of the second paragraph of the Sudder Court's letter, dated the 16th of March 1838, would be decidedly preferable. The court should therefore be directed to prepare and submit one accordingly.

3. In the same draft Act the judges may be requested to provide for the modification of Section 2, Regulation XLV. of 1793, and of Section 16, Regulation XXVI. of 1803, in the manner proposed in the papers which accompanied your above-mentioned letter of the 4th of September last.

I have &c.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Council Chamber, 15 April 1839.

(No. 767.)

From *J. H. Young*, Esq. Secretary, to *J. Hawkins*, Esq. Register Sudder Dewany Adawlut.

Sir,

Judicial Dept. WITH reference to your letter of the 16th March 1838 (No. 740), submitting a draft of a proposed Act for empowering the courts of civil judicature to sell landed property in execution of decrees, I am directed by the Honourable the Deputy-governor of Bengal to request that you will lay before the court the accompanying original letter from the Officiating Secretary to Government of India, dated the 15th instant, in order that the court may Act upon the instructions contained therein.

I am, &c.

Fort William, 30 April 1839. (signed) *J. H. Young*,
Secretary.

P. S.—You will be pleased to return the enclosure along with your letter.

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* Letter, No. 1928, from the Register of the Sudder Dewany Adawlut, dated the 6th July 1838, and its enclosure.
Letter, No. 1593, to the Secretary to the Sudder Board of Revenue, dated the 14th August 1838.
Letter, No. 489, from ditto, dated the 28th August 1838.

No. 8.
Sale in Execution of Decrees of Civil Courts.

(No. 1370.)

From *J. Hawkins*, Esq. Register, to *J. H. Young*, Esq. Officiating Deputy Secretary to the Government of Bengal, in the Judicial Department.

Sir,

With reference to your letter, No. 767, dated 30th April last, and its enclosure, from the Officiating Secretary to the Supreme Government, I am directed by the court to request that they may be furnished with a copy of your letter of the 4th September last, alluded to in Mr. Grant's communication to your address of the 15th April, No. 153.

Sudder Adawlut.
Present:
R. H. Rattray,
W. Braddon,
C. Tucker, esqrs. judges; and
J. F. M. Reid, esq. officiating judge.

I have, &c.

Fort William, 31 May 1839. (signed) *J. Hawkins*, Register.

(No. 1068.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to the Register Sudder Dewany Adawlut.

Sir,

In reply to your letter, No. 1370, dated the 31st ultimo, I am directed by the Honourable the Deputy-governor of Bengal, to transmit to you, as requested by the Sudder Court, the accompanying of the letter addressed to Mr. Maddock, the Officiating Secretary to the Government of India, in the Legislative Department, on the 4th September last, and alluded to in Mr. Young's letter to your address of the 30th April last.

Judicial Dept.

I am, &c.

Fort William, 20 June 1839. (signed) *J. H. Young*,
Deputy Secretary to Government of Bengal.

(No. 1914.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

With reference to your letter, No. 767, dated 30th April last, and its enclosure, from the Officiating Secretary to the Supreme Government, I am directed to transmit draft of an Act on the subject of transferring the power of selling lands in execution of decrees of court from the revenue to the judicial authorities.

Sud. Dew. Adawt.
Present:
R. H. Rattray,
W. Braddon, and
C. Tucker, esqrs. judges.
A. Dick, and
J. F. M. Reid, esqrs. temporary judges.

2. Adverting to the concluding paragraphs of Mr. Grant's letter to your address of the 15th April, I am directed to observe, for the consideration of government, that the enactments therein specially alluded to prescribe the primary steps to be taken in making the requisition to the fiscal authorities for the sale of land, and would of course be superseded, in common with all other enactments bearing upon the subject, upon the transfer of the power of sale from the revenue to the judicial functionaries. The object of the court in my letter, No. 1928, of the 6th July 1838, was the immediate passing of a law to do away with the legal necessity now existing for the principal sudder ameens to forward translations of their decrees to the commissioner of revenue, but which cannot be adopted in practice, in consequence of the majority of the officers of that class not understanding the English language. If the government, however, consider that this point does not require immediate legislation, a separate provision on the subject in the law of general transfer of the right of sale to the courts of justice will not be necessary.

3. The enclosure of your letter is herewith returned.

I am, &c.
(signed) *J. Hawkins*, Register.

Fort William, 19 July 1839.

No. 8.
Sale in Execution of Decrees of Civil Courts.

BE it enacted, that from the such parts of Regulation XLV. of 1793, Regulation XX. 1795, Regulation XXVI. of 1803, and VII. of 1825, of the Bengal Code, and of any other Regulation or Act in force, as relate to the sale by collectors of landed property of any description in satisfaction of decrees of the courts of civil judicature, or in execution of any other judicial process, be repealed.

2. Be it enacted, That the courts of civil judicature within the territories subject to the presidency of Fort William, in Bengal, shall be empowered to sell, or cause to be sold, lands of every description in execution of any decree or judicial process, in virtue of which such sales may be authorised by the Regulations or Acts now in force, or which may hereafter be enacted.

(signed) *J. Hawkins*, Register.

(No. 1300.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dept.

With advertence to your letter, No. 153, dated the 15th April last, which was referred to the Sudder Court on the 30th idem, with intimation that the court might act upon the instructions contained therein, I am directed by the Honourable the Deputy-governor of Bengal to transmit to you, to be laid before the Government of India for consideration and orders, the accompanying letter (No. 1914), in original, from the register of the court, dated the 19th ultimo, submitting the draft of an Act on the subject of transferring the power of selling lands in execution of decrees from the revenue to the judicial authorities.

2. With your reply you will be pleased to return the original document.

I am, &c.

Fort William, 8 August 1839. (signed) *J. H. Young*,
Deputy Secretary to the Government
of Bengal.

(No. 465.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative.

I am directed to acknowledge the receipt of your letter, No. 1300, dated the 8th August last, with its enclosure, and in reply, to state that the Honourable the President in Council does not, on further consideration, feel prepared to pass a law transferring the conduct of the sale of lands of every description sold in execution of decrees to the judicial authorities generally.

2. His Honor in Council is of opinion that it would be sufficient merely to do away with the necessity of the courts furnishing commissioner of revenue with translations of their decrees when lands are thereby directed to be sold, which would appear to be the practical difficulty that has led to the proposed new law. The draft of an Act is accordingly herewith transmitted, for any suggestions which his Honor the Deputy-governor or the Court of Sudder Dewany Adawlut may wish to make on the subject.

3. The original paper which accompanied your letter is herewith returned.

I have, &c.

Council Chamber,
11 Nov. 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the Government
of India.

Draft of Act.

It is hereby enacted, in modification of Section 2, Regulation XLV. of 1793, and Sect. 16, Regulation XXVI. of 1803, of the Bengal Code, and of any other Regulations, or parts of a Regulation, in the same code, which require any court of

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Sale in Execution of Decrees of Civil Courts.

of civil judicature to transmit to any revenue authority with any decree, requisition, or other paper, a translate of the same in English, that it shall not hereafter be necessary for any court of civil judicature, subordinate to the presidency of Bengal, to transmit to any revenue authority translates in English of any decrees, requisitions, or other papers which such court may have to transmit to such authorities.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

(A true copy.)

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

(No. 1928.)

From *F. J. Halliday*, Esq. Officiating Secretary to Government of Bengal, to Secretary Sudder Board of Revenue.

Sir,

With reference to my letter, No. 1593, to your address of the 14th August 1838, and to your reply, No. 489, dated the 28th idem, I am directed by the Honourable the Deputy-governor of Bengal to transmit to you the accompanying copy of a letter, No. 466, from the Officiating Secretary to the Government of India, dated the 11th instant, stating that,

on further consideration, the President in Council was not prepared to pass a law transferring the conduct of the sale of lands of every description, in execution of decrees, to the judicial authorities generally. His Honor in Council was, however, of opinion, that it would be sufficient merely to do away with the necessity for the courts furnishing commissioners of revenue with translations of their decrees, to which effect the accompanying draft of an Act has been submitted with Mr. Grant's letter, and on which the opinion of the Sudder *Court* is requested.

I am, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to Government of Bengal.

Fort William,
28 November 1839.

(No. 1927.)

From *F. J. Halliday*, Esq. Officiating Secretary to Government of Bengal, to the Register Sudder Dewany Adawlut.

Sir,

Your letter, No. 1914, dated the 19th July last, with its enclosure, having been submitted to the Supreme Government, for consideration and orders, I am directed by the Right honourable the Deputy-governor of Bengal to transmit to you the accompanying copy of a letter, No. 465, from Mr. Officiating Secretary Grant, dated 11th instant, stating that,

Board.

I am, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to Government of Bengal.

Fort William,
28 November 1839.

(No. 3579.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to Government of Bengal, Judicial Department.

Sir,

I am directed to acknowledge the receipt of your letter, No. 1927, dated 28th ultimo, with its enclosures, and in reply to state, for the information of his Honor the Deputy-governor, that they have no remarks to offer on the subject of the proposed draft of an Act, dispensing with the necessity for sending to the revenue authority a translate of the decree, or other requisition for the sale of landed property, in execution of decrees of court, and which they are of opinion may be passed in its present form.

Sud. Dew. Adawt.
Present:
R. H. Rattray,
W. Braddon,
C. Tucker, esqrs.
judges;
A. Dick and
J. F. M. Reid, esqrs.
temporary judges.

2. Previously, however, to the proposed Act passing into a law, the court consider that the Sudder Board of Revenue might be advantageously consulted, with

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the view of eliciting the sentiments of that body as to simplifying the mode of conducting sales. The result of the reference, if approved, might be made to form part of the new law.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William,
20 December 1839.

(No. 132.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to Secretary to the Sudder Board of Revenue.

Sir,

Judicial Dept.

I AM directed by the Honourable the Deputy-governor of Bengal to request that you will call the attention of Sudder Board to my letter, No. 1928, to your address, dated the 28th November last, requiring their opinion on the draft of an Act for doing away with the necessity of the courts furnishing commissioners of revenue with translations of decrees for the sale of lands in execution thereof.

I am, &c.
(signed) *J. H. Young*,
Deputy Secretary to the Government of Bengal.

Fort William,
16 January 1840.

(No. 52.)

From *E. Currie*, Esq. Secretary to the Sudder Board of Revenue, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Revenue Department.

Sir,

Miscellaneous Dep.
Present:
J. Pattle, esq.
C. W. Smith, esq.
and
J. Louis, esq.

WITH reference to your letter of the 28th November, No. 1928, enclosing copy of a letter from the Secretary to the Government of India, with draft of an Act for modifying Section 2, Regulation XIV. of 1793, I am directed by the Sudder Board of Revenue to request that you will submit the following observations and suggestions in regard to the present state of the law for the sale of lands, in satisfaction of decrees of court, to the consideration of the Honourable the Deputy-governor.

2. Neither your letter nor its enclosures make any mention of the question submitted to government by the Court of Sudder Dewany Adawlut, in their letters of the 27th January and 26th May 1837, copies of which accompanied your predecessor's letter to this Board, under date the 13th June of the same year. But since it has been determined to continue to the revenue authorities the duty of making sales in satisfaction of decrees of court, it appears highly desirable that the opportunity should be taken of settling by a declaratory enactment the respective functions of the revenue and judicial officers in regard to such sales. That much doubt and difference of opinion has existed on this subject is sufficiently evidenced by the letters of the Sudder Dewany Adawluts above referred to; and I am desired to add, that the ordinary practice of the revenue authorities is opposed to the construction of the courts.

3. The Board (senior and junior members) are of opinion that the confirmation of every sale by the commissioner is a necessary condition to the completion of the proceedings; and with reference to Section 5, Regulation VII. 1825, they would propose that the several powers of the commissioner and the judge, in regard to sales in execution of decrees, should be thus defined:

First. The commissioner of revenue should, as now, revise the proceedings of the collector, his revision to be confined to enforcing the prescribed legal formalities of the proceedings, and his power of reversal limited to cases where any of the rules and regulations prescribed for conducting such sales may have been contravened.

Second. The judge, when petitioned by a dissatisfied party, should decide all questions of individual claim or right of property, of every kind whatsoever, cancelling or confirming the sale accordingly.

4. For

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4. For instance, the following would be the course of procedure: The collector, after making the sale, would transmit, as hitherto, the sale papers in the first instance to the commissioner of revenue, and the latter officer, having satisfied himself that the sale had been legally conducted, would certify the same to the judge; or in the event of his finding the proceedings irregular, would cancel the sale, and direct a resale, acquainting the judge why that course had been adopted.

5. The Board would observe, that their rule and practice are alike so consonant to reason, that although on a cursory view Clause 1, Section 5, Regulation VII. 1825, would seem to vest the sole power and control in the courts of judicature of setting aside a sale in execution of a decree, yet that the practice, as above laid down, has continued interruptedly from 1793 to the present moment.

6. If, however, a reference be made to the tenor of the clause and section in question, it will be at once observed, that under it, every irregularity or illegality in the mode of publishing and conducting a sale must be brought to the notice of the court by a petition; of course this extends only to the parties in court, and such a provision could not in any way provide for the detection of those illegalities in the form of conducting a sale, by which the interests of government would be continually sacrificed, and for the protection of which the parties in court would feel no anxiety, nor indeed have the means of knowing when such interests were in jeopardy. The Board are prepared to send up a number of cases, if that is thought necessary, where the supervision of the superior revenue authority has alone prevented serious loss and inconvenience to government, in sales made in satisfaction of decrees of court. In short, it is only the following out of a general principle, which pervades every department of government, that each department shall give effect to and control its own peculiar processes. If the court require the revenue authorities to sell property, it is the province of the revenue authorities to conduct the sale according to the rules and regulations in their department, while it is the peculiar province of the civil court to dispose of the proceeds arising from the sale, and of all civil rights and claims appertaining thereto.

7. The temporary member desires me to say, on his part, that under Regulation VII. 1825, (he conceives) the exclusive power of determining all points connected with sales in satisfaction of decrees is vested in the court from which the precept to sell emanates. In Mr. Louis's opinion, the collector is, under the law, precisely what he ought to be in regard to such sales, the agent of the judge, who, under Section 5 of the Regulation quoted, is competent to annul the sale, "if any material deviation from the Regulations, and consequent irregularity in the sale, be satisfactorily established." Mr. Louis would declare no confirmation by the commissioner to be necessary, and would allow no revenue authority to exercise any discretion in the matter, beyond that vested in the collector by the concluding portion of Clause 3, Section 4, Regulation VII. 1825. Sales so made without the sanction of any revenue authority, would have the force, and nothing more, of private transfers, and could in no degree affect the interests of government either one way or the other.

8. Mr. Louis would also beg to recal the attention of government to a point which is very strongly urged in Mr. Secretary Mangles's letter of the 13th June 1837, viz. the practice of deducting from the sale proceeds any arrear of government revenue which may be due at the time of sale. In that letter the inconvenience and injustice of the practice are fully exposed; and Mr. Louis would only remark, in addition to what is there urged, that what was perfectly just and reasonable under the law of 1793, when specific parcels of land were sold on which the government had a distinct lien, becomes alike unjust and unreasonable under the law of 1825, by which the rights and interests of a certain individual, whatever they may be, are sold upon which the government has no distinct primary lien. Indeed, the whole of Regulation XLV. 1793, with the exception of the formal provisions contained in sections 12, 13 and 14, is (Mr. Louis observes) entirely inapplicable to the present state of the law regarding sales in satisfaction of decrees, and might with advantage be formally rescinded.

I have, &c.
(signed) *E. Currie,*
Secretary.

Sudder Board of Revenue,
Fort William, 4 February 1840.

No. 8.
Sale in Execution of Decrees of Civil Courts.

(No. 137.)

From *J. F. G. Cooke*, Esq. Judge of Zillah Dacca, to *F. J. Halliday*, Esq. Secretary to Government of Bengal, Fort William.

Sir,

Civil Court.

At the request of Mr. J. Reily, the principal sudder ameen of this district, I have the honour to submit the accompanying letter and its enclosure.

I have, &c.

Zillah Dacca,
5 March 1840.

(signed) *J. F. G. Cooke*,
Judge.

(No. 462.)

Let this letter and its enclosure be sent in original to the Sudder Board of Revenue for their report.

By order.

Fort William,
17 March 1840.

(signed) *J. H. Young*,
Deputy Secretary to the Government of Bengal.

From *James Reily*, Esq. Principal Sudder Ameen, to the Secretary to the Government of Bengal, in the Judicial Department, Fort William.

Sir,

From the accompanying decree given by this court (of which I have the honour to send copies both in the vernacular and in English), it will be seen that plaintiff sued for the reversal of a sale of his estate, but that none of the conditions of the validity of a sale having been infringed, and plaintiff having prayed not for damages, but for the annulment of the sale, his prayer was refused.

The circumstances attending the case appear, however, to involve hardship and injury to the plaintiff, who was a minor at the time of the sale, and I therefore avail myself of the provisions of Section 26, Regulation II. of 1822, in submitting the case for the gracious consideration of the Right hon. the Governor-general of Bengal, and in recommending that the estate may be restored to the plaintiff.

I have, &c.

Zillah Dacca,
Principal Sudder Ameen's Court,
28 February 1840.

(signed) *James Reily*,
Principal Sudder Ameen.

(Case No. 9575.)

Bulram Sen *v.* The Collector of Dacca.

Plaintiff's suit is, that his estate was under butwarrah when his father died, in the beginning of the year 1240, leaving him a minor; that his father had paid up all the revenue due for 1239, but that the estate having subsequently to his demise fallen into arrears, his father's servant took him to the collector, who, from compassion to his circumstances, brought the estate under the protection of the Court of Wards; that the collector appointed a manager to make the collections, but that this officer collected only 100 rupees from the estate; that the commissioner, under the orders of the Sudder Board, but contrary to the provisions of Regulation X. of 1793, cancelled his appointment, and directed the sale of plaintiff's estate; that the collector accordingly cancelled the appointment of the manager, and in the 11th chyet, 1241, without specifying the sudder jumma and the mongas and kismuts of the purchasers who held specific portions of the estate, sold it, with the mere declaration that the tenures of the purchasers were excepted; that the omission of this detail, in conjunction with the exhibition of the entire assessment against plaintiff's interests, alone was the cause of no one having bid for the estate, and of government having bought if for themselves; that the collector sold plaintiff's interests in the estate for a balance of *Rs.* 361. 9. 6. 3. of the assessment

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ment and *Rs.* 658. 5. 13. 3. of penalty and interest, due from the entire estate; that his family servants had moreover petitioned the collector, alleging that the purchasers had paid less than the proceeds of their lands; that the collector after purchasing plaintiff's share of the estate admitted, in his roobakaree of the 16th December 1835, that such was the fact; that in 1241 the purchasers have consequently paid a much larger sum, more than covering the government assessment, leaving a surplus besides. Plaintiff prays therefore, that the sale may be cancelled, and the property restored to him.

Defendant pleads that plaintiff's estate is a joint estate, and that it could not be brought under the Court of Wards; that it was under butwarrah, and that the estate was sold under Section 34 of Regulation XIX. of 1814.

It is enacted in section 5, Regulation XI. of 1822, that the civil courts are not competent to reverse a sale if—

1st. The lands form the estate on account of which the arrear has accrued.

2d. If the permission to make the sale have been received from the Board of Revenue.

3d. If due notice of the demand shall have been given.

4th. If some part of the amount demanded in the notice shall be due at the time of sale.

5th. If the sale shall be made at the time and place mentioned in the advertisement.

It is further declared, in section 4, that "any person who may consider himself aggrieved by any act or circumstance connected with a sale not amounting to such failure, shall have his remedy in a personal action for damages against the individual by whom or by whose fault he may have been endamaged."

As plaintiff sues for an annulment of the sale, and not for damages, the court is primarily required to ascertain whether the conditions of the validity of a public sale, enumerated above, have been infringed.

We find that clause 1st of the section requires that the lands sold form the estate on account of which the arrear has accrued. Plaintiff alleges that the collector did not specify the particular mongas and kismuts which were exempted; but does not deny that the estate in question is the estate for which the balance is said to have been due. The omission therefore of a more particular specification of the vested interests is rather an argument in favour of the sale received with reference to this section; inasmuch as no specific portion of the estate can be said to have been omitted.

Clauses 2 and 3 and 5 are not disputed.

Clause 4th requires that some part of the amount demanded in the notice shall be due. And plaintiff contends that had the purchasers paid up all they ought to have paid, no balance would have been due.

It is necessary therefore to inquire—

1st. Whether it was imperative to ascertain the precise amount which the lands of the purchasers yielded?

2d. Was all that they yielded actually taken?

In respect to the first question, we suppose it was necessary that the whole of the available assets should have been ascertained, as Section 34, Regulation XIX. of 1814, directs that the tender of the balance due shall be calculated in the proportion which the produce of such mehal may bear to the jumma of the whole estate; and because it may happen that a proprietor may sell only a portion of his lands, and yet that portion may more than suffice to pay the whole of the sudder jumma. For instance, suppose an estate with a sudder jumma of 1,000 rupees (the whole of which is in balance) is about to be sold and that the original proprietor has paid no portion of the balance, suppose also that the purchaser's lands are estimated to yield 2,000 rupees, deducting from this sum 20 per cent. for malikana and expense of collection, his estimated sudder jumma would be 1,600 rupees, and the account would stand thus:—

Sudder jumma	*Rs.* 1,000
Balance	1,000
Estimated jumma of the purchasers	1,600

which will give 1,600 rupees, or 600 rupees over and above the amount due to government for the whole of the estate. The possibility then that such might have

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have been the case, clearly made it the duty of the collector, not only towards the owners of the specific mehals, to enable them to save their lands, but towards the original proprietor himself, whose interests were equally at stake, to ascertain the precise amount recoverable from the purchasers.

We come then to the second question, Was all that was available actually taken? We find from the admissions made on both sides that this was not done. In 1240 only *Rs.* 2,933. 14. 13. 2. is declared to have been received. In 1241 the purchasers paid *Rs.* 3,449. 7. 19. 1., which apparently covered the whole of the assessment. But this does not impugn the collector's proceedings, as he is simply required "to satisfy himself that the produce of the mehal has not been underrated;" and this he appears to have done by the only means available to himself, of making the butwaries swear to the authenticity of their accounts.

It may, however, be urged that though the collector is not to blame, yet if it appears that he was in error, or that he was deceived, and that the actual amount of proceeds, if really ascertained, would have saved plaintiff's interests from the hammer, these circumstances are enough, on the ground of equity, to justify a reversal of the sale. But the fact is, that though the amount paid in 1240 appears to have covered the whole of the assessment, that amount was more than ought to have been received from the purchasers. They were illegally required by the collector to pay in the entire proceeds of their lands without deducting the percentage for malikana and expense of collection allowed by the Regulation. The sum to be carried to the credit of the estate would therefore be 15 per cent. or *Rs.* 517. 6. 15. 2. short of the sum paid, viz. *Rs.* 2,931. 1. 3. 3. If to this be added the 100 rupees collected by the manager, we shall find, that taking the payments of 1241 as the criterion, the amount which ought to have been received in 1240 could not have exceeded *Rs.* 3,032. 1. 3. 3., and that the difference between this sum and the assessment, *Rs.* 3,236. 7. 6. 3. would have been *Rs.* 204. 6. 3., and the argument of the error and the deception therefore at once falls to the ground.

From all these considerations, we arrive at the conclusion that some part of the amount demanded in the notice was due; and that none of the conditions involving the validity of the sale having been infringed, the court has not the power to cancel or annul the sale.

Plaintiff contends, that being at the time a minor, he ought to have been taken under the jurisdiction of the Court of Wards; but though his estate was not a joint estate, none of the purchasers having a right in the whole of it, their interests extending only to specific portions of it, yet as he does not come within the qualification of being "sole proprietor of the estate," and as the power of undertaking or declining the care of a minor's interests is, under Regulation VI. of 1822, left optional with the Court of Wards, plaintiff's plea on this point cannot avail him.

But it appears that the appointment of the manager, however laudable in the motive which induced it, was still an illegal procedure; that the minor's friends were thereby precluded from making the collection during the period in which the manager held his appointment; and that the collector's illegal and unauthorised interference was the cause, partly at least, of the arrears not having been completely realized. And this we consider as sufficient in itself to constitute a valid ground for reversing the sale; the manager having been appointed on the 4th October 1834, and dismissed on the 14th February, only 37 days anterior to the advertised date of sale.

The illegality of the collector's proceedings will appear more palpable when we find that the Regulations have prescribed the course which he ought to have pursued on the demise of the minor's father. Regulation I. of 1800, section 1, directs that "In all cases of joint undivided estates, when one or more of the proprietors shall die leaving heirs who are under age, it shall be the duty of the judge within whose jurisdiction such estate may be situated, on the receipt of a report from the collector, stating the grounds on which he or they may consider the next of kin as unfit to be entrusted with the care of the person or management of the estate of the heir, to investigate the nature of the objections to the nearest of kin, and if satisfied himself that they are well founded, the judge shall nominate some other person of character and respectability to act as guardian of the heir." Regulation V. of 1812, section 26, also declares that, "inconvenience to the public and injury to private rights having been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, it is hereby enacted, that whenever sufficient cause shall be shown by the revenue authorities, &c., it shall

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shall be competent to the zillah judge to appoint a person duly qualified to manage the estate."

It is probable therefore that had these provisions been complied with, the judge would have appointed some one interested in the welfare of the family of the deceased, which the collector did not do, and the appointment of such a man would have saved the minor's interests.

The hardship of the case assumes a yet stronger aspect when it is considered that the estate was not in arrear whilst the father was living, and that the assessment of the preceding year of his demise, that is 1239, had been all paid up, though he died in the beginning of 1240, the year in which the present arrears occurred; which establishes the presumption that the estate was not wanting in assets to pay up the arrears, and that the loss of the estate to the minor has arisen from the neglect and disorder into which his interests had been thrown in consequence of the demise of his father, accelerated by the collector's illegal and unauthorized interference with the estate.

We find further, that collectors are authorized generally to sell an entire estate for any balances that may accrue upon it, and individual interests only in cases of butwarrah or petition. The section which gives him the power (sect. 34) contains two provisions, viz. the collector's right to sell an individual portion, and the right of the owner of specific mehals to pay up, and save his interests. If this right had not been given, it is believed that the right to sell their individual interests would not have been given. The one right therefore is evidently a concomitant of the other. If therefore by any intervening circumstance transpiring subsequent to the commencement of the partitions, such as the demise of any of the proprietors and the succession to his interests of an infant, an obstacle is induced which prevents the proprietor from availing himself of the provision in his favour, it follows I presume that the right of the collector to sell his individual interests lapses also. The collector in such a case can only proceed under the general provisions of the Regulations, and sell the entire estate. With reference even to a common obligation, the rules of legitimate interpretation are that whenever an obligation contains more than one condition, annexed conjunctively, all the conditions must be accomplished, and if any one do not take place the obligation is of no effect.

It may be urged that section 34 provides simply for the owners of specific mehals, not for the original proprietor. But though the section thus professedly protects an owner of a specific mehal only, yet the general principles of the rule will allow of a similar application to the original proprietor, who during a partition is literally no more than the owner of that specific portion which was left to him after the alienation by sale of the other portions.

It is clear also that the interest and penalty stated in the notice as *Rs.* 658. 5. 13. 3. was due from the entire estate, more indeed from the purchasers than from the original proprietor. For what could be due from the latter upon a balance of 204 rupees even at 24 per cent? Not more certainly than 48 rupees for the whole year. Yet no part of the interest or penalty was recovered from the purchasers, but the whole from the original proprietor. This was obviously unjust. And though a reduction on this account would still have left a balance due from plaintiff, yet the demand of money which was not due was an act of injustice, and was in itself a reason for not discharging the remainder of the claim. The reduction of the demand would moreover have left so small an amount recoverable from the minor, as to have enabled his friends with less difficulty to have borrowed the amount, and thus saved the estate.

But not only has plaintiff lost the estate in question, but there is every possibility of his being reduced to a state of positive destitution if the sale of this estate is not annulled. For the estate was bought by the government for the nominal value of a rupee, leaving the whole of the balance for which it was put up still due from the minor; and the collector of Dacca has requested the collector of Backergunge to sell another estate belonging to the plaintiff, for the balance in question; a step which in the present state of the case must be considered as strictly legal, though extremely hard, and which nothing short of the reversal of the original sale, or the intermediate interference of government can prevent, the right of the court to stop the sale for even the temporary period that this suit was under investigation having been both disputed and disallowed by the revenue commissioner of the division.

From these particulars we gather—

1st. That the collector, by his illegal and unauthorized interference, prevented the realization

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realization of the arrears of the assessment, which might otherwise have been realized by the friends of the minor.

2d. That the Regulations provided the course of procedure, in giving the judge the power of nominating a guardian, which the collector did not avail himself of.

3d. That the law which authorizes the sale of individual interests under butwarrah was not applicable to the case of the minor, and that the sale thereof was illegal.

4th. That the estate was not in arrears till the father died, and he was succeeded by the helplessness of youth.

5th. That the sum demanded of the minor was nearly five times above what was actually due, which was not only unjust, but a sufficient reason in itself for withholding the demand.

6th. That the claim of an amount so much above what was actually due prevented the friends of the minor from advancing it themselves or borrowing it of others; it being more than probable that had the real amount only been demanded, the smallness of the sum might have ensured a loan.

7th. That unless the sale be cancelled, the minor will have lost a second estate for a balance, four-fifths of which was due by others.

Whilst, therefore, we dismiss the plaintiff's suit, in conformity with the law which bars the court from annulling the sale, except under certain conditions, the court cannot avoid availing itself of the privilege it possesses under Section 26, Regulation II. of 1822, of recommending to the government that the sale be cancelled, and the property restored to the plaintiff.

As the estate was purchased for the nominal sum of one rupee by the government themselves, it is not necessary to give a statement of the compensation which the law directs should be awarded to the purchaser.

Zilla Dacca,
6 February 1840.

(signed) *James Reily*,
Principal Sudder Ameen.

(No. 204.)

From *E. Currie*, Esq. Secretary to the Sudder Board of Revenue, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Revenue Department.

Sir,

Present: J. Pattle, esq.

I AM directed by the Sudder Board of Revenue to acknowledge the receipt of your letter, No. 462, of 17th ultimo, forwarding for report a letter from the judge of Dacca, under date 5th idem, together with its enclosures, regarding the case of Bulram Sen *v.* The Collector of Dacca; and in reply, am instructed to submit the following observations for the consideration and orders of the Right honourable the Governor of Bengal.

2. The former zemindar of Chuckla Ameerabad, zillah Dacca, disposed by private sale of several portions of his estate to various individuals, who thus acquired proprietary interests in the zemindaree, with the right of separation. Butwarrahs were applied for and granted, and up to the end of 1239 B. S. the revenue appears to have been punctually discharged. Early in 1240 B. S. the zemindar died, leaving an only son, a minor of 12 years old. During this year heavy arrears accrued, in satisfaction of which the estate was advertised for sale. The proprietors of the specific mehals under butwarrah claimed the privilege of Section 34, Regulation XIX. of 1814, and having paid in what the collector conceived to be their fair proportions of the jumma, their shares were exempted from sale. A balance of *Rs.* 361 current revenue, and 638 penalty and interest, remained due, in satisfaction of which the collector was about to sell the share which had been retained by the former zemindar, when it was represented to him that this share was the sole property of a minor, in consequence of which representation the sale was postponed. The share was not actually taken under the charge of the Court of Wards, but the commissioner approved the suspension of the sale, and appointed a surbarakar to make collections; but little or nothing appears to have been done by this man. Upon the case being reported to the Board, they considered that the minor's share could not be brought under the Court of Wards, and that it was liable to sale for the arrears due upon it. The sale accordingly took place, and in the absence of bidders the minor's share was bought by government for one rupee. On 24th March 1835, a petition against this sale was transmitted to the Board for report

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report by Mr. Secretary Mangles; and the Honourable the Governor of Bengal particularly desired to be informed upon what grounds the Board had deemed it proper to withdraw the protection of the Court of Wards from the estate of the minor petitioner. On 3d April the Board furnished a report upon the case, and stated, that as Chuckla Ameerabad was a joint undivided estate, they considered themselves to be precluded by Section 3, Regulation X. of 1793, from extending the protection of the Court of Wards to the minor. On 28th April his Honor again referred the case for the further consideration of the Board, expressing his doubt whether the minor's share of Chuckla Ameerabad had not been virtually brought into the condition contemplated by Section 4, Regulation VI. of 1822, inasmuch as all the other coparceners had claimed and exercised the right of paying their respective portions of the balance due, and especially referring to the general tenderness of the legislature for the interests of minor zemindars. On 11th May 1836 the Board submitted the result of their deliberations, and expressed their opinion that Section 4, Regulation VI. of 1822, was never intended to have any reference to a minor possessing a portion of an undivided estate, and that consequently the sale of the minor's share in Chuckla Ameerabad (which, although under butwarrah, was still an undivided estate) was strictly legal. On 28th June 1836, the Right honourable the Governor was pleased to express his concurrence in the Board's view of the matter, and his opinion that a share in a mehal under butwarrah, though liable to be exposed to sale separately and independently for the recovery of its proportion of the revenue assessed upon the integral mehal, in case the other coparceners shall exercise the privilege accorded to them by Section 33, Regulation XIX. of 1814, and shall pay up the respective portions of the balance due, is not an "estate" in the general acceptation of the Revenue Regulations, nor of the particular enactment above cited.

3. The guardians of the minor having thus failed in obtaining a reversal of the sale, either from the revenue authorities or from government, instituted a suit for that purpose in the civil courts. The suit was referred by the judge to the principal sudder ameen of Dacca, Mr. Reily, a translation of whose decision accompanied Mr. Cooke's letter to your address, under date 5th ultimo. The principal sudder ameen is of opinion, that as none of the conditions declared by law to be essential to the validity of a sale have been violated, the court has no power to pass a decree in favour of the plaintiff; but at the same time, considering the case to be one of great hardship towards the minor, he has availed himself of the permission granted by Section 26, Regulation II. of 1822, to recommend to government that the estate should be restored to its former proprietor.

4. The Board have given their best attention to Mr. Reily's decision; and although it contains a good deal of reasoning in which they cannot concur, particularly with regard to the construction of Section 34, Regulation XIX. of 1814, yet after a careful consideration of all the circumstances of the case, they are disposed to support the recommendation for the restoration of the estate. The fact that the revenue was punctually paid during the lifetime of the late zemindar, shows that the arrear was not occasioned by insufficiency of assets, and affords a strong presumption that had the local authorities acted in conformity with the Regulations, and applied to the civil court for the appointment of a manager and guardian, under Regulation I. of 1800, the necessity for the sale would not have occurred; at all events, the appointment of the surburakar, who appears to have completely neglected the interest of the minor, was an unauthorized proceeding on the part of the commissioner and the collector. It also seems to be doubtful whether a portion of the penalty and interest was not due from the proprietors of the specific mehals, although the whole was charged to the account of the minor, whose remaining property in zillah Backergunge has been advertised for sale in realization of the same, his share of Amerabad having fetched only one rupee. The fact of government being in this case the purchaser obviates the objections founded upon the rights acquired by third parties, which generally present themselves to any interference with a sale once confirmed; and the Board may add that, except under very particular circumstances, they are inclined to doubt the expediency of government becoming the proprietor of a share in a joint undivided mehal. They would therefore suggest that the minor's share be restored to him, upon payment of the balance of revenue actually due at the time of sale on account of such share, and that, under all the circumstances, the demand for penalty and interest be remitted.

 5. Pending

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5. Pending his Lordship's orders upon this report, the Board have directed the commissioner of Dacca to suspend the sale of the minor's property in Backergunge; and they have also called for an explanation of a very extraordinary passage in the principal sudder ameen's decree; from which it would appear that subsequently to the purchase of government the proprietors of the specific mehals were required by the collector to pay *Rs.* 3,449. 7. 19. 1. as their share of the revenue, although the sudder jumma of the entire estate is only *Rs.* 3,236. 7. 6. 3. It is true that Mr. Reily states this requisition to have been illegal; but still, adverting to the tenor of his arguments, and particularly to the illustration which he adduces in support of them, it would appear that that gentleman really supposes that Section 34, Regulation XIX. of 1814, may, in certain cases, be considered to warrant that payment should be demanded from the proprietors of specific mehals under butwarrah of a larger amount of government revenue than the sudder jumma of the entire estate. The Board trust that the commissioner's report will show, that at all events none of the revenue authorities have entertained so erroneous an opinion.

I have, &c.
(signed) *E. Currie*,
Secretary.

Sudder Board of Revenue,
22 April 1840.

P. S.—The original enclosures of your letter under acknowledgment are herewith returned.

(No. 686.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to the Secretary to the Sudder Board of Revenue, dated 5th May 1840.

Sir,

I AM directed by the Right honourable the Governor of Bengal to acknowledge the receipt of your letter, No. 204, of the 22d ultimo, respecting the suit instituted by Bulram Sen against the collector of Dacca, to obtain the annulment of the sale of Chuckla Ameerabad, in zilla Dacca.

His Lordship having fully considered all the circumstances under which the estate in question was brought to sale, concurs with the Board in opinion that the case of the plaintiff is deserving of favourable consideration; he is pleased accordingly to authorise the restoration to him of his share of the estate, upon payment of the balance of revenue actually due at the time of sale on account of such share.

His Lordship is likewise pleased to sanction the remission of the penalty and interest due from the plaintiff.

In giving effect to these orders, the Board will take effectual steps to prevent the plaintiff from acquiring and exercising the power over the under-tenants which the government became entitled to as purchasers of the estate.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 242.)

From *E. Currie*, Esq. Secretary Sudder Board of Revenue, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Revenue Department.

Sir,

Present:
J. Pattle, esq.

WITH reference to my letter, No. 204, of 22d ultimo, reporting upon the case of Bulram Sen *v.* Government, I am directed by the Sudder Board of Revenue to transmit to you, for the purpose of being laid before the Right honourable the Governor, the accompanying copies of a letter, No. 128, of 4th instant, from Mr. Commissioner Gordon, and of their reply to this date. His Lordship will perceive, that it is the commissioner's wish that the issue of orders in this case should

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should be delayed until the receipt of a report which he has promised to furnish, and which he has been directed to transmit as speedily as possible.

I have, &c.
(signed) *E. Currie*,
Secretary.

Sudder Board of Revenue,
16 May 1840.

P. S. Since this letter was written, the Board have received (on the 15th) the orders of government, bearing date the 5th instant. With his Lordship's permission, the Board will delay the issue of those orders until they shall receive Mr. Gordon's report.

(No. 128.)

From *E. M. Gordon*, Esq. Commissioner of Revenue, to the Sudder Board of Revenue, Fort William.

Gentlemen,

In reply to your letter, No. 58, dated the 22d ultimo, respecting the case of Bulram Sen *v.* Government, I do myself the honour to state as follows:

2. I will, as soon as possible, submit a report on the subject referred to in the third paragraph of your letter. My object in writing to you at present is, to request you will do me the favour to delay, until you hear from me again, your recommendation to government to restore to Bulram Sen his share of the estate sold.

3. As the decree in question appeared to me to establish a very dangerous precedent, I considered it to be my duty to appeal from it to the zillah judge. All the facts of the case are not set forth in the decree. For instance, the balance for which the estate was sold did not include the balance of one whole year in addition to the sale balance. The reason of this was, that the sale took place when Clause 3, Section 3, Regulation XI. of 1822 obtained, regarding estates under butwarrah, and as the sale took place on the 27th April 1835, the balance for which the estate was sold was that which still remained for the years 1833–34.

I have, &c.
(signed) *E. M. Gordon*,
Commissioner of Revenue.

Commissioner's Office,
Dacca Division, Mymensingh,
4 May 1840.

From *M. A. Bignell*, Esq. Deputy Superintendent Legal Affairs, to the Commissioner of the 15th Division, Dacca.

Sir,

Present:
J. Pattle, esq.

I am directed by the Sudder Board of Revenue to acknowledge the receipt of your letter, No. 128, of 4th instant, regarding the case of Bulram Sen *v.* Government, and to inform you, in reply, that their report was submitted to the Right honourable the Governor on 22d ultimo. They have, however, forwarded a copy of your letter for his Lordship's consideration, and they request that you will lose no time in furnishing your promised report.

2. The Board did not consider it necessary to refer to the local authorities previously to recommending the return of the estate to the minor defaulter, as the circumstances of the case were fully discussed in the correspondence which took place at the time of the sale; but they will give their best attention to any suggestions you may wish to offer, as well as to any facts which you may bring forward, and with which they may not hitherto have been made acquainted. At present the Board are at a loss to understand your object in appealing to the zillah judge. The decree of the principal sudder ameen dismissed the suit against government; and Mr. Reily's mere recommendation, that the estate should be restored to the minor defaulter, will, of course, be of no avail, unless the government shall be satisfied that such restoration is just and proper. It is true that Section 26, Regulation XI. of 1822, provides for an appeal in cases of this description; but it seems obvious that the provision can be applicable only to cases in which the estate, sold at auction, and proposed to be restored, shall have been purchased by a private party. When government is the purchaser

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it can, of course, restore the estate, if it think proper to do so, without any recommendation from the civil courts; and on the contrary, it may decline to return the property, notwithstanding such recommendation, if it be not satisfied of the propriety of the proceeding.

I have, &c.

Sudder Board of Revenue, 16 May 1840. (signed) *M. A. Bignell*, Deputy Superintendent Legal Affairs.

Sudder Board of Revenue, Fort William, 16 May 1840. (signed) *E. Currie*, Secretary.

(No. 1877.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Sud. Dew. Adawt. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, esqrs. judges.

I AM directed by the court, with reference to Mr. Register Reid's letter, No. 276, of the 27th January 1837, and the resolution annexed thereto, and to his letter, No. 1490, of the 26th May 1837, to forward to you, for submission to the Right honourable the Governor, copy of a letter (No. 8, dated 8th January last) from the judge of Dacca, regarding the reversal by the commissioner of the division of a sale in execution of a decree, which had been previously confirmed by the principal sudder ameen of that district, together with copy of the correspondence which has, in consequence, taken place between the two courts on the subject.

To W. Court, No. 934, 27 March, with enclosures. From W. Court, No. 837, 24 April.

2. As there is a difference of opinion between the two courts, and collisions may be expected to occur between the judicial and revenue authorities in the present unsettled state of the law, the court solicit that the revenue authorities be consulted, and that it be decided by government whether the resolution of the 27th January 1837 shall be promulgated among the subordinate authorities for their observance, or whether sales in execution of decrees of court shall be confirmed in any other mode than that proposed therein.

3. Mr. Carmichael Smyth, who joined the court since the occurrence of the recent discussion, has recorded his sentiments in a Minute, of which a copy is herewith submitted.

I have, &c.

Fort William, 5 June 1840. (signed) *J. Hawkins*, Register.

(No. 8.)

From *J. F. G. Cooke*, Esq. Judge of Zillah Dacca, to *J. A. F. Hawkins*, Esq. Register to the Sudder Dewany Adawlut, Fort William.

Sir,

Civil Court.

I HAVE to bring to the notice of the court a case in which the civil court and the commissioner have passed opposite orders regarding a sale made in satisfaction of a decree of court.

2. Mr. Reily, the principal sudder ameen, on a petition of objections to the sale, overruled them, and confirmed the sale. In the meantime the commissioner took up a petition and upset the sale. I think it is quite necessary that it should be decided which authority has the power of passing orders regarding sales, and that only one authority should interfere. I beg to call the court's attention to my letters, No. 199 of the 12th April, No. 249 of the 21st May, and No. 355 of the 11th July 1836, to which I have received no reply.

3. The property has since been sold, for arrears of revenue, for about half as much as it sold for at first. It is true the amount for which the sale was made was a small sum, but there are many other decrees against the same parties, which will not now be satisfied.

4. I must say that I cannot agree with the commissioner that the following are valid reasons (in their present form) for upsetting a sale. The petitioner asserts the ishtehar was not issued in the mofussil, and that the signatures to the soomthal are forgeries. The collector replies, that the ishtehar was served in the mofussil one month and a day before the sale. On this the commissioner remarks,

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remarks, "that the collector ought to have examined witnesses on the petitioners' behalf, but he had not done so." This is taken as one reason for upsetting the sale; but I think the collector ought to have been ordered to take evidence, as it was considered necessary. The petitioner again says, that Sheeb Chimder bid more than the purchaser; that the collector sent a chupprassee with him to get the deposit, but before he returned it was sold to the next highest bidder, without being put up again. The collector replies, that he waited till evening, and that the estate was put up again according to regulation. On this the commissioner remarks, "that the collector should have taken evidence on behalf of the petitioner;" and this is another reason. But I think the collector ought to have been instructed to take evidence.

5. The other reason for upsetting the sale is, that it should have been sold in portions, as the amount of the decree was so small.

6. I annex copy of a petition from Gopeenauth Shah, and Ramnarain Shah, buyers at a sale ordered by the court, to show that another instance has occurred besides the abovementioned one.

I have, &c.
(signed) *J. F. G. Cooke*, Judge.

Zillah Dacca, 8 January 1840.

P. S.—Copies of roobakaries from the commissioner of Dacca, dated 21st August 1839, and of Mr. Reily, dated 12th September 1839, together with the translations thereof in English, are annexed.

(signed) *J. F. G. Cooke*, Judge.

(No. 934.)

From *J. Hawkins*, Esq. Register, to the Register of the Sudder Dewany Adawlut, North West Provinces.

Sir,

I AM directed to request that you will submit the accompanying copy of paper as per margin*, regarding the respective powers of the judicial and revenue authorities, in confirming sales of land made in execution of decrees of court, for the consideration and opinion of the judges of the Western Court.

Sud. Dew. Adawt.
Present:
R. H. Rattray,
C. Tucker,
E. Lee Warner, esqrs.
judges; and
J. F. M. Reid, esq.
temporary judge.

2. The resolution, a copy of which is now forwarded, was adopted by the court, with reference to the correspondence therein adverted to, especially the letter of this court, and your predecessor's reply of the 18th November and 16th December 1836, respectively.

3. The proposed letter to government, a copy of which accompanies, was prepared under instructions of the court, in consequence of a collision which has recently occurred between the judge of Dacca and the commissioner of the 15th Division, and which has satisfied the court of the necessity of some final adjustment of the question of the extent of power to be respectively exercised by the authorities above referred to in paragraph 1, in cases of the nature under consideration.

4. The western court will observe that Mr. Tucker has taken exception to the resolution, for the reasons stated in his Minute. The majority of the court, however, are of opinion, that the law as lain down in the resolution is correct, and that the commissioner of revenue has no power either to confirm or reverse sales made in execution of decrees of court; they further consider, that all objections to such sales, after they have been completed, should be preferred to the judicial authority, who, in their opinion, has the power to confirm, in the event of no objections having been urged.

I have, &c.
(signed) *J. Hawkins*, Register.

Fort William, 27 March 1840.

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* Resolution of the Court, and letter to Government, 27 January 1837.—Proposed letter to Government.—Minute of Mr. Tucker.

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(No. 276.)

From *J. F. M. Reid*, Esq. Register, to the Secretary to Government of Bengal.

Sir,

Sud. Dew. Adawt.
Present:
R. H. Rattray,
W. Braddon,
D. C. Smyth, esqrs. judges.

I AM directed by the court to request you will submit for the consideration and orders of the Right honourable the Governor of Bengal, the accompanying copy of a resolution, this day recorded, on the subject of the duty to be performed by the commissioners of revenue, in regard to the sale of lands by the revenue authorities, in satisfaction of decrees of court.

2. The accompanying copies of a letter addressed to the register of the court of Sudder Dewany Adawlut, in the Western Provinces, by order of the court, under date the 18th November last, No. 2751, and of that officer's reply, dated the 16th ultimo, No. 1082, will put the Right honourable the Governor in possession of the facts of the case out of which this discussion arose.

I am, &c.
(signed) *J. F. M. Reid*, Register.

Fort William, 27 January 1837.

RESOLUTION of the Presidency Court of Sudder Dewany Adawlut, under date the 27th January 1837.

Letter from Judge of Dacca, dated 12 April 1836, No. 199.
Letter to - - ditto - - dated 6 May 1836, No. 954.
Letter from - ditto - - dated 21 May 1836, No. 254.
Letter to - - ditto - - dated 1 July 1836, No. 1450.
Letter from - ditto - - dated 11 July 1836, No. 355.
Letter to Comm. of Revenue, 16th Division, dated 5 Aug. 1836, No. 1764.
Letter from ditto, dated 25 Aug. 1836, No. 64.
Letter to Register of Sudder Dewany Adawlut, W. Ct. dated 18 Nov. 1836, No. 2751.
Letter from dittto, dated 16 Dec. 1836, No. 1082.

THE court having taken into consideration the correspondence noted in the margin, are of opinion, that the duty of confirming or reversing a sale of land made by a collector, in satisfaction of the amount of a decree of court, should be performed entirely by the zillah judge, under Section 4, Regulation VII. of 1825, and that the duty of commissioners of revenue should be confined solely to directing the collector to select the lands for sale, agreeably to Section 2, Regulation XLV. 1793, and Section 17, Regulation XXVI. 1803.

2. The court deem it however proper, before issuing any general instructions to the zillah judges, to refer the subject for the consideration of government, in order that, if considered necessary, the opinion of the revenue authorities may be obtained.

Ordered, that a copy of this resolution be forwarded to the secretary to the government of Bengal, with a request that it may be submitted for the consideration and orders of the Right honourable the Governor.

(Proposed Letter.)

To the Secretary to Government of Bengal, in the Judicial Department.

Sir,

Sudder Dewany Adawlut.

As instances are occasionally occurring in which the judicial and revenue authorities are brought into collision, in consequence of the existing practice in regard to the confirmation or reversal of sales of land made by collectors, in satisfaction of decrees of court, I am directed to request that you will bring the subject to the consideration of his Honour the Deputy-governor. A previous reference on the same subject was made, under the court's instructions, by my predecessor, in his letter, No. 276, of the 27th January 1837, which the court presume has not been replied to, in consequence of the contemplated measure of transferring the entire conduct of such sales from the revenue to the judicial authorities. As that measure, however, has recently been disapproved by the Supreme Government, the court are induced to re-submit, for his Honour's consideration, this branch of the subject, as urgently requiring the immediate application of some remedy for the evils which exist.

2. The

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2. The remedy which the court beg to suggest is, the circulation to the several judges and collectors of the resolution which accompanied Mr. Register Reid's letter above cited. The resolution declares the law on the subject as construed by the sudder courts, and the court would, therefore, consider it necessary to act upon it in cases of the kind brought before them; but it is clear that, in order to secure the co-operation of the revenue authorities, it will be requisite for the Sudder Board to issue corresponding instructions to their subordinate officers.

I have, &c.

Fort William, the

Mr. Tucker's Minute.

1. The Resolution of 27th January 1837, referred to in this draft, not having been yet submitted for the concurrence of the Western Court, I may be permitted to express my opinion, that it goes beyond the law. It sets out with saying, "that the duty of confirming or reversing a sale of land made by a collector, in satisfaction of the amount of a decree of court, should be performed entirely by the zillah judge, under Section 4, Regulation VII. 1825." Now, I can find nothing in the section quoted, nor indeed in any part of the Regulations of government, which conveys to the zillah judges the authority to confirm sales of the nature of those alluded to, whilst I may confidently appeal to the recorders of the Revenue Boards, from 1793 to the present day, to show that such has never been the practice. Had the resolution confined itself to saying that the zillah judges only had authority to cancel such sales, it would have my entire concurrence, as an exposition of the law, and this would, I imagine, be quite sufficient for all purposes.

2. Though I find no express law directing the superior revenue authorities to confirm such sales, yet I am of opinion such duty must be admitted to appertain to them as matter of course, in the absence of any prohibition to the contrary. It must be remembered that the conduct of sales of law, whether in satisfaction of arrears of government revenue, or of decrees of court, has uniformly been vested in the revenue authorities. I presume it is not denied that confirmation is essential to the completion of a sale; undoubtedly it is so under the present system, when the purchase-money cannot be demanded until the sale has been confirmed. This duty, therefore, viz. conducting sales generally, having been entrusted to the revenue authorities, it was deemed superfluous, I suppose, to provide expressly for the confirmation of sales made in satisfaction of decrees by the same authority; for when the courts call upon the revenue authorities to effect a sale of lands in satisfaction of a decree, it necessarily follows that the revenue authorities must do every thing essential to the completion of such sale. I am the more inclined to adopt this view of the subject, from the fact of the law having expressly provided for the reversal of such sales by the zillah judges, though altogether silent on the point of confirmation: the state of the case seemed to require this authority being vested in the judges, and in them alone; but the confirmation of a sale by the judge appears altogether unnecessary: the exception here seems to prove the rule.

3. My opinion is, that a sale having been made by a collector on a lotbundee, previously sanctioned by a commissioner, the commissioner is bound to confirm the sale on the expiration of 30 days from the day of sale, unless objections have been preferred to him, or unless the judge shall have directed him to stay confirmation; in either of these cases he must await the judge's final orders, and be guided thereby. If the objections be deemed valid by the judge, he, the judge, will of course cancel the sale; if otherwise, he will reject them, and then the commissioner must confirm the sale.

4. I think, however, it would have been better had the authority to cancel sales, for any material irregularity in the conduct thereof, been reserved to the superior revenue authorities; whilst all other objections might with propriety have been left to the disposal of the court ordering the sale. It seems immaterial by whom this duty should be discharged; but whilst the revenue authorities are not only more conversant with the details of sale proceedings, it seems at the same time reasonable that they should exercise that degree of supervision over their subordinates which may be necessary to control their proceedings, and provide for their being

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being conducted in a legal and proper form; instead, therefore, of recommending the Resolution of 27th January 1837, for the sanction of government, I would solicit my colleague's attention to the mode of proceeding suggested in the 3d paragraph of this Minute, as being in strict conformity with the existing law, and providing fully against the delay likely to result from the reversal of sales by the revenue authorities in mere matters of form.

(signed) *C. Tucker.*

(No. 837.)

From *M. Smith*, Esq., Officiating Register, Allahabad, to *J. Hawkins*, Esq. Register to the Sudder Dewany Adawlut, Fort William.

Sir,

Sud. Dew. Adawt.
Present:
W. Lambert,
B. Tayler, esqrs. judges.
G. P. Thompson & F. Currie, esqrs. officiating judges.

I AM directed to acknowledge the receipt of your letter, No. 934, dated 27th ultimo, relative to the respective powers of the judicial and revenue authorities in confirming sales of land made in execution of decrees of court, on which the opinion of the Calcutta court is communicated, and the sentiments of this court asked in return.

2. It appears that the majority of the presidency court hold that, under the law, the commissioner of revenue has no power either to confirm or reverse sales made in satisfaction of decrees, his duty being restricted solely to directing the collector to select the lands for sale, agreeably to enactments quoted in the margin, the duty of confirming and reversing such sales being considered by them to devolve entirely on the zillah judge, under Section 4, Regulation VII. 1825.

Sec. 2, Reg. XLV. 1793.
S. 17, Reg. XXVI. 1803.

3. In this view I am desired to state Mr. Lambert's concurrence. He remarks that, by Section 5, Regulation VII. 1825, the civil courts possess the authority of cancelling sales made in execution of decrees, on the ground of any irregularity in conducting them, whence he thinks it may be fairly inferred that such power is exclusively vested in them, and was not intended to be conferred on any other authority; and the possession of such power, Mr. Lambert argues, implies the competency to confirm also, which duty should, in all cases where objections may not have been urged, or may have been overruled, be performed by the civil court, the obligation of the revenue authorities being purely ministerial.

Messrs. Tayler, Thompson, and Currie.

4. But the majority of this court differing from their colleague, and from the majority of the Calcutta court, on the question of the confirmation of such sales by the civil courts, agree with each other to the extent that no power of confirmation is conferred on those tribunals by law, as well as that no formal confirmation by any authority is essential to the legal validity and completeness of a sale made in execution of a judicial decree by order of a court; and, supposing that part of the rule which declares the necessity of confirmation of such sale by the court to be relinquished, I am instructed to say that Mr. Tayler would, in that event, acquiesce in the proposed resolution of the Calcutta court.

5. On the other hand, Messrs. Thompson and Currie regard the nature and extent of the functions exercisable by the revenue authorities respectively, in the conduct of sales in satisfaction of decrees, in a different and more extended point of view. They observe, that the authority to whom the courts must, under the law, look for effecting the sale is the commissioner of revenue, who makes use of the agency of the collector, and no doubt possesses the power of controlling the proceedings of his subordinate, in so far as regularity and conformity to established rules are concerned. To what extent the commissioner may consider it necessary to approve and confirm those proceedings, before reporting the completion of the sale to the court, is a matter of revenue procedure in which the court can exercise no interference; at the same time no order (they remark) issued by a commissioner, in reference to the proceedings of a collector in conducting a sale, can of course alter the competency of the court to stay or cancel the sale in any stage of those proceedings.

C. 2, Sec. 4, Reg. VII. 1825.

6. Messrs. Thompson and Currie further observe, that a reference to the extracts (paragraphs 146 and 147) cited in the margin* of the printed rules of practice of the

* 146. "Commissioners are sometimes in the habit of interfering in or withholding confirmation of sales made in satisfaction of decrees of court, and of ascertaining from the court, before confirming them, whether there be any objection to the sale being made final."

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the Sudder Board of revenue, will show that the rule of revenue procedure in these provinces is in conformity with the above principle, and that, therefore, no construction or order would seem to be required in this division of the presidency.

I have, &c.

Allahabad, 24 April 1840. (signed) *M. Smith*, Officiating Register.

NOTE.

1. Mr. Tucker's Minute, of the 27th March last, being about to be submitted to government, with the correspondence that has lately taken place between the Calcutta and Allahabad courts regarding sales, I wish, as one of the judges who approved of the Resolution of the court under date the 27th January 1837, to record a few remarks on this subject.

2. The Resolution declares that the duty of confirming or reversing a sale, made by a collector in satisfaction of a decree of court, should be performed entirely by the zillah judges, under Regulation VII. of 1825.

3. Mr. Tucker states, that he can find nothing in the Regulations that gives zillah judges authority to confirm such sales, and he contends that this power should be exercised by the revenue authorities.

4. In arguing this subject, it appears to me that Mr. Tucker has not sufficiently kept in view the difference between a sale for an arrear of revenue and a sale made in satisfaction of a decree of court.

5. In the former instance, if the proceedings of the collector appear in a court of law to have been improper or irregular, damages may be adjudged against the government, and in such cases it is important that the revenue authorities should have the power of revising the proceedings of the collector, and of either confirming or annulling the same, as to them may appear proper. Sec. 26, Reg. XI. 1822.

6. When land, however, is sold by order of the courts, in satisfaction of a decree, no responsibility whatever is thrown on the revenue authorities, or on the government. The Regulation (VII. of 1825) expressly states, moreover, that if the revenue officers of government are guilty of any irregularity in conducting the sale, the parties dissatisfied are to go to the judge, who on proof of such irregularity may summarily annul the sale; such orders being open to summary appeals to the higher tribunals. If the courts, therefore, hold a sale to have been conducted regularly, no action of damages can lie against the government; but if the revenue authorities take upon themselves to say that there was no irregularity in the sale, it is open to any one to question that decision in a court of law. Sec. 38, Reg. XI. 1822.

7. The fact is, that no express confirmation of a sale made in satisfaction of a decree, under the orders of a court of justice, is called for by any Regulation; unless some party comes forward to question the regularity of the sale within one month, the decree holder obtains the proceeds of the sale, and the auction purchaser of the lands obtains possession as a matter of course. In such cases no order of confirmation is ever recorded. In the Revenue Department the law and the practice is quite different. No sale is final until actually confirmed by the local commissioner; and, for the reasons I have stated, it is highly proper it should be so.

8. It was on a full consideration of these circumstances that the court, consisting of the judges whose names are noted in the margin, came to the opinion that the duty of confirming (in all cases where confirmation might be called for), as well as of reversing these sales, should be performed by the zillah judges, and not by the commissioners, seeing very clearly from the correspondence that had been brought under their consideration, that a contrary course had led to much confusion, and would give rise to constant collisions between the revenue and judicial authorities. Mr. Rattray, Mr. Braddon, Mr. D. C. Smyth.

9. Thus

147. "The depreciation in the value of the property sold, and the inconvenience caused to parties interested by the uncertainty and delay inseparable from this practice, render it necessary to prohibit it in future, and you are therefore requested to bear in mind that it is incumbent on commissioners to confirm all such sales, if conducted in conformity with established rules, when not otherwise instructed by the authority from which the order for sale proceeded, and without interfering in any way with the court's power of cancelling under Regulation VII. of 1825."

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9. Thus the court might have cases brought in appeal before them, in which sales had been confirmed as legal by the revenue authorities, and reversed as illegal by the judicial authorities; or sales denounced by the revenue commissioners as having been conducted with gross irregularity, declared by the judges, under the power vested in them by Section 5. Regulation VII. 1825, to have been conducted with all the requisite forms of office.

10. The judges who assisted in drawing up the Resolution dated 27th January 1837, deemed it their duty to put a stop if possible to such discreditable collisions between the covenanted functionaries of government; they observed, that nothing was guaranteed to the purchaser of lands at these sales but the rights and interests of the individuals answerable for the decrees, and consequently the rights of government could not in any way suffer; they considered it inexpedient, therefore, that the power to confirm these sales should be exercised by the revenue commissioners when the law empowered the zillah judges to annul them; and they held that as the law had given the zillah judges the power of controlling the proceedings of the collectors whenever they might consider those proceedings to be illegal and irregular, there could be nothing contrary to the intent of the Legislature in entrusting the same judges with the power of confirming these proceedings when they were of opinion that they had been held in a regular and legal manner, and in strict conformity to the Regulations.

11. Under the above circumstances, believing the resolution to be founded on a correct construction of the Regulations, and that it will prevent fraudulent and litigious applications from one authority to another, I recommend it to be upheld and carried into effect, as the only course in the present state of the law that will prevent the collisions which, from the papers now submitted to government, would appear to be of constant occurrence in the Dacca Division.

30 May 1840. (signed) *D. C. Smyth.*

(True copies.)
(signed) *J. Hawkins*, Register.

(No. 265.)

Legis. Cons. 29 March 1841. No. 4.

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *J. Thomason*, Esq. Secretary to the Government of the North West Provinces.

Sir,

Legislative Dept.

I AM directed to transmit to you for submission to the Honourable the Lieutenant-governor North West Provinces, copies of the accompanying papers noted in the margin*, on the subject of modifying the law for the sale of lands in execution of awards of court, and to express the wish of the Governor-general in Council to be favoured with his Honour's opinion on the proposed enactment, together with the opinions of the sudder court and Board at Allahabad.

I have, &c.
(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

Fort William,
17 August 1840.

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* Letter from Register Sudder Dewanny Adawlut, dated 16th March 1838, No. 740, to Secretary to the Government of Bengal, with enclosures.
Letter from the Officiating Secretary to Government of India, to the Secretary to Government of Bengal, No. 153, dated 15th April 1839.
Letter from Register Sudder Dewanny Adawlut, to the Secretary to Government of Bengal, No. 1928, dated 6th July 1838.
Letter from ditto to ditto, No. 1914, dated 19th July 1839.
Letter from Officiating Secretary to Government of India, to Secretary to Government of Bengal, No. 465, dated 11th November 1839, with enclosure.
Letter from Secretary Sudder Board of Revenue at Calcutta to the Secretary to Government of Bengal, No. 52, dated 4th February 1840.
Letter from Secretary to Government of Bengal to Jun. Secretary to Government of India, No. 1154, dated 30th June 1840.

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Legis. Cons. 29 March 1841. No. 5.

Revenue Dept.

(No. 1626.)

From *J. Thomason*, Esq. Secretary to the Government in the North West Provinces, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India.

Sir,

I AM directed by the Honourable the Lieutenant-governor to acknowledge the receipt of your letter, dated August 17th last, regarding a proposed enactment for transferring the conduct of sales of land in execution of decrees of court from the revenue to the judicial authorities, and to request you will lay before the Right honourable the Governor-general in Council the enclosed copies of letters from the Sudder Board of Revenue* at Allahabad, and the Sudder Dewanny Adawlut † regarding the measure.

2. It will be observed that whilst the Court of Sudder Dewanny Adawlut is favourable to the transfer, the members of the Sudder Board of Revenue see no advantage in the change, and are apprehensive lest evil effects should arise from it.

3. His Honour, after giving the subject his fullest consideration, has come to the conclusion that the change is unadvisable, as being unnecessary, unsuited to the constitution of the department in these provinces, and likely to lead to much abuse.

4. It cannot be here said, as is observed in paragraph 7 of Mr. Halliday's letter of June 30th, that the collectors of land revenue do not possess any particular fitness for this duty. On the contrary, they have in these provinces a peculiar fitness for conducting all operations connected with the transfer of landed property. They are at present the investigators and definers of all rights connected with the landed property. A full and accurate register of the present state of that property, founded on minute survey and searching local inquiry, is formed in their office. A further provision is made through the putwarries and connongoes, offices for maintaining and correcting the register. Minutely subdivided as the property is, none of it can change hands without the effect being felt through the numerous branches of the tehsuldarry agency, or in the Summary Suit Department, which is here the legal method of adjusting all village accounts, when anything tends to interrupt the amicable arrangement of such matters.

5. It is unnecessary to allude to the strong attachment which is felt by the natives of this country for their hereditary land. Our first transfers of such property, whether in satisfaction of the government demand or the liquidation of private debts, is exceedingly distasteful to them, and opposed to their former practice. Great evils and confusion have arisen from the abuse of the authority to make such transfers, and it is to be feared that these abuses might occur with still greater force if the whole process of transfer were vested in a class of public officers whose powers are so new, untried, and in many respects so little under control as are those of the subordinate judges. When the execution of the proposed transfer is lodged in a separate class of officers whose records furnish the fullest and most authentic information regarding the selected property, and who are themselves conversant with the interests and quality and liabilities of that property in other respects, and under different circumstances, evidently a strong check is laid upon any abuse of the process, and this check his Honour is unwilling lightly to forego. The measure would greatly increase the power of the courts, and facilitate the realization of money under its decrees, but the present process fairly carried out adequately, appropriately, and safely, meets all these objects.

6. Under Section 6, Regulation VII. 1825, the courts are empowered to use the agency of the collectors of land revenue in the execution of all decrees regarding landed property. Such has been extensively and beneficially the practice during the progress of the settlement. So far from diminishing the duties of the collectors in the case of sales, his Honour would feel disposed to extend their powers by rendering general and obligatory the provisions of the above enactment. It is most essential to the security of the landed property here, that the register of estates should be maintained correctly; and this would be insured by providing that

* No. 413, dated 6th October 1840. † No. 1979, dated 9th October 1840.

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that no transfer of land should be carried into effect except through the agency of the office where that register is kept.

7. The whole of the system of record and registry organised in these provinces will be found fully explained in sections 5–9 of the Sudder Board's printed circular on records and registration, dated August 28th last, which has just been published. The few remarks in section 10 of that publication place the subject in a strong light.

8. His Honour is convinced that nothing will tend so much to improve the judicial administration in these provinces, in the numerous and important class of cases which affect the landed property, as the maintaining to the utmost the reciprocal action of the judges and collector's offices upon each other. The duties of the latter are strictly ministerial, but they are necessarily so performed as to detect errors and prevent collusions to which the past history of our civil administration proves that our courts of civil judicature are sometimes liable. Such then being his Honour's general views on the subject above discussed, he proceeds to notice those points in the correspondence now before him which call for peculiar remark, as requiring adjustment by legislative interference.

9. It is thought necessary to dispense with translations to accompany decrees furnished by the courts of justice to the collectors as now required by Section 16, Regulation XXVI. 1803. A provision similar to that contained in the draft of an Act, bearing the signature of Mr. J. P. Grant, and dated November 11th, 1839, answers the required purpose. It may, however, be remarked that the merest note of the contents of a decree which should set forth the parties, subject-matter, and final decision, may in some sort, and sufficiently for all legal requisition, be termed a translation, and might be prepared with small trouble in the clerk's office, and be a useful accompaniment of the original decree. The necessity or expediency of entirely dispensing with an English notice of the event is very questionable.

10. The powers of the superior revenue authorities, and of the courts of justice, are held to require explanation. The distinction assumed by the senior and junior members of the Calcutta Sudder Board, in paragraphs 3–6 of their letter of February 4th last, appears to his Honour to be just; so long as the process is conducted by a junior revenue officer it is right that its execution be reported to his superior, in order to provide that none of the interests committed to the departments, and none of the rules prescribed for its guidance, are violated. Whatever regards the reciprocal rights of individuals, parties to the suits or otherwise, arising out of the process, may advantageously be left to the civil courts.

11. A definition is wanted of the term "small portions of lakheraj land," alluded to in Section 3, Regulation VII. 1825. This may be easily ruled. Portions less than a whole mouzah might be held transferable by the judicial authorities.

12. A provision is required authoritatively restricting the sale to the right, title, and interest of the person against whose property the process is directed, and rescinding all Regulations which can be held to authorise the absolute sale of any mehal, or portion of a mehal, without the proviso implied in the above words.

13. It is also held that the deduction of an outstanding balance of revenue from the price bid at a public sale, should be prohibited by law. The Board, in paragraphs 2 and 3 of their letter of October 6th, observe, that such a practice is positively forbidden in these provinces, in all cases except in the sale of an entire mehal, the property of the defendant, and the prohibition might with safety be made general.

See also Printed Circular on Rent and Revenue, sec. 8, para. 132.

14. These are the only points which appear to his Honour deserving of legislative interference, and none of them are so pressing but that sufficient provision might be made for them by means of circular orders.

15. If however it should be ultimately determined to transfer the conduct of sales of land in execution of decrees from the collectors of land revenue to the judicial authorities, his Honour trusts that precise and stringent rules will be laid down for their guidance in the performance of this important duty, so as to guard against the abuses to which the hasty or corrupt exercise of the power might lead. A brief Act which should devolve on the Court of Sudder Dewanny Adawlut the preparation of the rules as proposed in Mr. M. Smith's letter of Act IX. is much

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to be deprecated; rules of that sort are often little known beyond the limits of the department in which they are promulgated, and they do not carry with them the force or sanction of law.

I have, &c.
(signed) *J. Thomason*,
Secretary to the Government in the North-west Provinces.

Agra,
17 November 1840.

(No. 413.)

From *H. M. Elliot*, Esq., Secretary to the Sudder Board of Revenue, North-west Provinces, Allahabad, to *J. Thomason*, Esq., Secretary to the Honourable the Lieutenant-governor of the North-west Provinces.

Sir,

Revenue Dept.

In reply to the orders conveyed in your letter, No. 1348, dated the 19th ultimo, the Sudder Board of Revenue, North-west Provinces, request that the following observations may be submitted to his Honor the Lieutenant-governor.

2. In these provinces the sale of lands in execution of decrees has now been for some time entirely separated from the sale of land for arrears of revenue, and the collectors have been prohibited from levying arrears of revenue from the proceeds of sales by order of court. The only exception to the above rule was in case of the sale of an entire mehal, the sole property of the defendant in the suit. But the Board are satisfied that no inconvenience will arise from that case also being included in the general rule, because of course when purchasers are aware that the mehal will continue responsible for any arrear of the revenue assessed upon it, notwithstanding the sale, they will decrease the amount they would otherwise bid, by the exact sum which they will have to pay on account of the arrear.

3. It was for this reason alone that the Board allowed the exception to stand hitherto, because they saw the result was exactly the same either way in the case of the sale of an entire mehal, being the sole property of a defendant: for as a purchaser, knowing that he must pay the arrear in addition to the price, will deduct from the price, which he would otherwise be willing to pay, the amount of the arrear; so a purchaser, knowing that the arrear would be deducted from the purchase-money, would offer the full value of the estate as his bid. It follows that the revenue of government can be in no respect imperilled or injured by the proposed measure.

4. It will, the Board remark, save much time and trouble, both to the collectors and the courts, to adopt the mode now proposed; the sale of lands in execution of decrees being for some reason always an unwelcome duty to the collectors, and one in the performance of which they require much pressing.

5. The only hesitation which the Board feel on the subject regards neither the principle of the proposed measure, nor any fear of its effect on the revenue, but its effect on the landed interest.

6. The Board, from their opportunities of observation, cannot but fear that unless very strict rules of procedure be laid down, and some means of superintendence beyond what now exists established to enforce attention to those rules, very great irregularities and great peril of detriment, not to say ruin, to third parties will arise from entrusting indiscriminately to all the native judicial officers the power of sale, if attended also with the power of making over the thing sold.

7. The Board are of opinion, that every facility should be given to the free sale of landed property in these provinces, as the only remedy to the people for the pauperizing effect of the minute and constantly increasing subdivision resulting from the combined operation of their own laws and our early regulations. The object of the Board's labours in the settlements has been to effect so complete a record of every man's possession, that there might be no difficulty in effecting a sale, either by his own voluntary act, or by the interposition of the court to act for him. Provision has been made for keeping up this record, so that it shall be always available.

8. The collector can always, therefore, tell the court what any individual holding separately actually has in possession, or what any two or more individuals, holding jointly, have in possession.

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9. If on the sale, by a court, of one of these interests, the court direct the collector to put the purchaser in possession of what was held by the person whose property is sold, this can always be done; and if the purchaser claim more, he may have his suit for the specific thing which he claims. If the defendant object, he may have his suit to reclaim anything to which he objects.

10. But if it be left to the native judges to give possession, the Board's experience induces them to fear that there will continually be endeavours made to put the purchaser in possession of something more than the defendant actually held. The Board make this remark on the ground of having had continually before them instances in which the native judges have endeavoured to force the collectors to give possession both in suits and sales of what is held by third parties. Now there is nothing which so completely tends to break up an agricultural community as attempts of this kind; it nullifies all the records made with so much cost and pains, and makes all property uncertain, and the strictest rules should be laid down in this matter.

11. In lands in which no person is appointed to administer the law without a previous ample training, or at least the power of obtaining the advice and aid of those that possess that training, such perils do not exist; but the class of persons who exercise judicial functions in this country makes it incumbent on the government, not only to put forth sound principles, but where the rights of third parties are concerned, to fence by strict rules the limits within which the powers given are to be exercised, as it regards any other than the actual parties to the suit or matter before the court.

I have, &c.
(signed) *H. M. Elliot*,
Secretary.

Sudder Board of Revenue,
North-west Provinces, Allahabad,
6 October 1840.

(No. 1979.)

From *M. Smith*, Esq., Officiating Register, Sudder Dewanny Adawlut, North-west Provinces, to *J. Thomason*, Esq., Secretary to the Honourable the Lieutenant-governor in the Judicial Department, North-west Provinces, Agra.

Sir,

Sud. Dew. Adawt. N. W. P.
Present: W. Lambert, B. Tayler, and F. Currie, esqrs. judges; and G. P. Thompson, esq., officiating judge.

I AM directed to acknowledge the receipt of your letter, No. 2776, dated 19th ultimo, and its annexures, on the subject of a proposed law for empowering the courts of civil judicature to sell land property in execution of decrees, without the intervention of the revenue authorities, on which the sentiments of the court are called for; and, in reply, I am instructed to express the acquiescence of the court in the arguments set forth in the communication of the secretary to the government of Bengal, No. 1154, dated 30th June last, and in the preference given therein to the draft of a brief Act appended to the Sudder Court's letter of 19th July 1839, No. 1914, in respect of which this court would merely suggest a verbal modification and addition or two, as follow:

Sect. 1. For, "as relate to the sale by collectors of landed property," &c., the court would substitute "as relate to the sale by the revenue officers of," &c.

Sect. 2. After the words, "shall be empowered to sell or cause to be sold," the court would insert, "under such rules as may from time to time be devised by the Courts of Sudder Dewanny Adawlut, the rights and interests of parties in lands," &c.

2d. The court observe that the rights and interests are all that, under any circumstances, the civil courts can have aught to do with, and as regards the subjection of the sale to rules to be prepared by the court, the judges would beg strongly to urge that all minor details, concerning the time and place of sale, mode of conducting it, agent for that purpose, nature of his remuneration, &c., should be left to be settled by the two courts in communication with each other.

I have, &c.
(signed) *M. Smith*,
Officiating Register.

Allahabad,
9 October 1840.

(True copies.)

(signed) *J. Thomason*,
Secretary to the Government in the North-west Provinces.

No. 8.
Sale in Execution of Decrees of Civil Courts.

(No. 1731.)

From *F. J. Halliday*, Esq., Secretary to the Government of Bengal, to *T. H. Maddock*, Esq., Secretary to the Government of India, Judicial Department.

Legis. Cons. 29 March 1841. No. 6. Judicial Dept.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the register of the Sudder Dewanny Adawlut at the presidency, being in continuation of the communication, dated 5th June last, forwarded to you under cover of my letter, No. 1154, of the 30th idem.

No. 3742, dated 30 Oct. 1840.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
17 November 1840.

P. S.—You will be pleased to return the original document now forwarded.

(No. 3742.)

From *J. Hawkins*, Esq., Register, Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, in the Judicial Department.

Legis. Cons. 29 March 1841. No. 7. Enclosure.

Sir,

I AM directed by the court, in continuation of my letter, No. 1877, of the 5th June last, to forward to you, for the purpose of being laid before the Right honourable the Governor, copy of a communication from the officiating judge of Shahabad (No. 288, of the 15th ultimo, with its enclosures), in which that officer reports that the commissioner of the division reversed a sale in execution of a decree, which had been confirmed by the court under whose authority it took place.

Sud. Dew. Adawt. Present: D. C. Smyth, esq. judge.

2. The court beg leave to suggest that the subject be taken into early consideration, and the judicial authorities furnished with some definite rules for their guidance.

I have, &c.
(signed) *J. Hawkins*, Register.

Fort William,
30 October 1840.

(Copies.)

From the Officiating Judge of Shahabad to the Court, No. 288;
dated 15th September 1840.

I HAVE the honour to forward copy of a communication from the Board of Revenue to the commissioner of the Patna Division, approving of the course pursued by that officer in upsetting a sale authorised and confirmed by the civil court; and, as the principle involved in the Board's letter appears to infringe on the powers vested by Regulation VII. of 1825, in the courts of judicature, I beg the Supreme Court will favour me with their opinion on the subject, for the future guidance of myself and the inferior judges.

2. In the case noted in the margin the plaintiff obtained a decree in the court of the principal sudder ameen, and the execution thereof was made over to the additional principal sudder ameen, who forwarded, on the 14th December 1837, a proceeding to the collector of Shahabad, for the sale of Mouza Kewa, Pergunnah Chynpore. The collector, after the usual course had been gone through, effected a sale of the property on the 27th October 1838.

Birjmohun Doss, plaintiff, *v.* Chuttoorseiul Sing, defendant.

3. A petition was presented, in conformity with the provisions of Regulation VII. 1825, to the additional principal sudder ameen, on the part of the decree holders, against the validity of the sale, and the same, after due inquiry, was rejected, and the sale confirmed. An appeal was preferred before the judge, who, however, saw no reason for interfering with the order of the subordinate court.

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4. On the 25th May the purchaser of the property presented a petition to the additional principal sudder ameen, informing that officer that, notwithstanding the sale had been confirmed by the civil courts, the commissioner of the division had reversed the same.

5. On the 22d August I addressed the Commissioner on the subject, and received in reply the papers which I now forward.

(signed) *W. S. Alexander*,
Officiating Judge.

From the Commissioner of the Patna Division to the Officiating Judge of Shahabad, No. 978; dated 28th August 1840.

In reply to your letter, No. 270, dated 22d instant, I have the honour to transmit copy of a letter, No. 302, of the 21st of August 1839, from the Sudder Board of Revenue, together with my roobacarry of this date, regarding the sale of Mouza Kawa, Pergunnah Chynepoor.

(signed) *E. C. Ravenshaw*,
Commissioner.

From the Secretary to the Sudder Board of Revenue to the Commissioner of the Patna Division; dated 21st August 1839.

Miscellaneous Dep.
Present:
J. Pattle and
C. W. Smith, esqrs.

I am directed by the Sudder Board of Revenue to acknowledge the receipt of your letter, No. 612, of the 7th ultimo, transmitting copy of an appeal preferred by Shew Sheweek Sing, &c. auction purchasers, against the annulment by you, on the 17th May, of the sale of Mouzah Jeypoor Heettyah Kendah, Pergunnah Munnair, made in satisfaction of a decree of court, the same sale having been previously confirmed by the court on the 19th April, and to communicate the following remarks for your information and guidance.

2. Undoubtedly there is something unseemly in the collision of decisions between the court confirming the sale and the commissioner reversing it; but the apparent inconsistency is easily reconciled, if the different functions of the court and of the revenue authorities be duly considered. The Revenue Board have continued, from the earliest period, to exercise a supervision over the acts of the officers subordinate to them, and are expressly constituted to protect the fiscal rights of the state from loss. In the present instance the collector, obeying a precept of the court, put up to sale the rights and interests of the maliks of Talooka Jynpore Huttya Kendar (these mehals having a sudder jumma of 2,801 rupees) in Jynpore only, assigning to these mehals an arbitrary jumma of Rs. 2,027. 11. 8., which sale, on the papers being submitted, you thought proper to reverse.

3. In submitting an appeal from the reversal, you, for the second time, state your doubts as to the legality of your having reversed the sale, and of your issuing any order conforming or reversing sales held by collectors in satisfaction of decrees of civil courts.

4. Clause 1, Section 5, of Regulation VII. of 1825, appears to favour such an interpretation, as it provides for an application to the court directing the sale, and gives that court power to annul the sale, for any material deviation and consequent irregularity in the sale; but the provisions above referred to go on to show that such deviation or irregularity is to be brought to the notice of the court by petitions within a month; they clearly, therefore, have reference only to petitions by individuals being parties before the court; and do not limit, much less interdict, the inherent ministerial power of supervision possessed by Boards of revenue, from the earliest enactment of the Statute Book in 1793, to revise, confirm, and annul, under certain restrictions, all sales made by collectors of revenue.

5. The powers of the court under the law referred to are quite distinct from those with which the Board are nevertheless and notwithstanding invested for the protection of the rent-roll, and generally the interests of the state, against the consequences of gross irregularities and informalities in the conduct of sales; and as the powers to be exercised by both these authorities are of different descriptions, there

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there is nothing to prevent their co-existence, nor their enforcement when necessary, without any collision or interference with each other, inasmuch as the occasions and purposes for which they are respectively provided have no necessary connexion, but, on the contrary, differ widely from each other.

6. This is no new doctrine, for on the 13th September 1833 the Sudder Board sent the following instructions to the commissioner of Patna:

"The Sudder Board having had before them your letter of the 23d ultimo, with its enclosures, direct me to inform you in reply, that as no sale is consummated until confirmed by you, you should proceed to perform your part towards the end directed, whenever a sale is ordered by a court of law, in satisfaction of a decree, without reference to the court, which is, of course, competent to interfere on its own motion, if it see cause. The duties of the revenue authorities are confined, in these cases, to the conduct of the sales, ordered in a legal manner, in a revenue point of view; and, if all due forms have been observed, confirmation is a matter of course: also, further responsibility rests with the court that directs the sale, and to which only an appeal therefore lies."*

7. Again, on the 7th February 1834, when the commissioner of Patna, in which the court had decided against the prayer of a petitioner to annul the sale, and the said petitioner had appealed to the Sudder Dewanny Adawlut against the judge's order, solicited further instructions as to whether the commissioner ought to suspend his own decision touching the sale, in regard to its having been conducted conformably to the sale laws, the Board replied in the following terms: The Sudder Board, having had before them your letter of the 7th ultimo, direct me to inform you that, under the circumstances stated by you, you should proceed to confirm the sale in due course, notwithstanding the appeal to the superior court. That appeal regards a matter in which the revenue authorities are in nowise concerned; it is sufficient for you to have received the orders referred to in Clause 2, Section 4, Regulation VII. of 1825; and in the execution of these orders no reference should be had to any proceedings going on out of your own department, of which, strictly speaking, you can have no official knowledge. But if in any special case you desire instructions for your guidance, and that of the collector, you ought to solicit them from the court which directed the sale to take place.

8. The power, therefore, exercised by you in the present instance is in strict conformity, in every respect, with the instructions of this Board, of the legality of which they have no doubt, and of the wholesomeness of which there cannot be a stronger instance than the present, in which the collector, after having advertised the share of four dependents, viz. Raee Ram Bullub Horeer Roy, Roomar Raee, Bidder Narain, and Raee Ram Mohem, proceeds to sell the shares of the two first named only, without a new advertisement, and then most illegally sells one mehal upon an arbitrary jumma of Rs. 2,027. 11. 8. in a talook, consisting of several undivided mehals, recorded in his own books, with a sudder jumma of 2,801 rupees. It is with such errors and illegalities, in a revenue point of view, the occurrence of which would, if not checked, entail heavy loss of revenue upon the estate, that the commissioner, as a Board of revenue and not court, has to deal, and which it is incumbent upon it to correct with promptitude.

9. The Board, therefore, direct that the appeal be rejected, and they refer you to their previous instructions, observing that all inconveniences might be obviated, were the courts to await the decision of commissioners of revenue on the legality or illegality of sales in a revenue point of view, before deciding upon the question of confirmation or annulment in regard to the objections of parties in court.

(signed) *E. Currie*, Secretary.

The original native papers of your letters are herewith returned.

(True copies.)

(signed) *J. Hawkins*, Register.

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* *See* circular of 15th January last.

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Sale in Execution of Decrees of Civil Courts.

(No. 149.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Legis. Cons. 29 March 1841. No. 8.
Judicial Dept.

Sir,

No. 86, of the 8th instant.

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the register of the Sudder Court, annexing copy of a communication from the judge of Dacca, respecting the inconvenience experienced from the want of instructions on the subject of the interference of the revenue authorities with sales effected under the orders of the civil courts.

2. The letter of the 5th June last, referred to by Mr. Hawkins, was submitted along with my communication of the 30th idem.

I have, &c.
F. J. Halliday,
Secretary to the Government of Bengal.

Fort William,
26 January 1841.

P.S.—Please to return the enclosures.

(No. 86.)

Legis. Cons. 29 March 1848. No. 9. Enclosure.

From *J. Hawkins*, Esq. Register of the Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Sud. Dew. Adawt. Present: D. C. Smyth, esq. judge.

WITH reference to my letter, No. 1877, of the 5th June last, I am directed by the court to forward to you, for the consideration of the Right honourable the Governor, copy of a letter (No. 715 of the 17th ultimo) from the judge of Dacca, representing the inconvenience experienced from the want of instructions on the subject of the interference of the revenue authorities with sales effected under the orders of the civil courts.

I have, &c.
(signed) *J. Hawkins*, Register.

Fort William,
8 January 1841.

From the Judge of Dacca to the Court; dated 17th December 1840, No. 715.

I BEG to call the Court's attention to my letter (No. 8, of the 8th January last), to which I have as yet received no reply, and request the court will inform me what orders have been passed on the subject, as the sale of the other property is delayed in consequence.

(signed) *J. F. G. Cooke*, Judge.

(True copy.)
(signed) *J. Hawkins*, Register.

(No. 151.)

Legis. Cons. 29 March 1841. No. 10.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Judicial Dept.

Sir,

No. 69, of the 1st instant.

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter, together with certain statements, and the draft of an Act from the register of the Sudder Court, relative to the great delay caused by the revenue authorities in the execution of the decrees of the mofussil courts.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
26 January 1841.

P.S.—Please to return the enclosures.

No. 8.
Sale in Execution of Decrees of Civil Courts.

Legis. Cons. 29 March 1841. No. 11. Enclosure.

Sud. Dew. Adawt.
Present:
R. H. Rattray,
C. Tucker,
E. Le Warner, and
D. C. Smyth, esqrs. judges; and
J. F. M. Reid, esq. temporary judge.

(No. 69.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

The court being desirous of ascertaining, on correct data, whether the delay apparent in some of the districts under their superintendence, in the execution of decrees, arose from the references necessary, under the present state of the law, to be made to the revenue authorities, issued a circular order on the 12th June last, directing the several district judges to forward, with all practicable convenience, a copy of the last quarterly statement sent by those officers to the commissioners of their divisions, agreeably to Form (B.) of the circular order of the 12th December 1834, No. 127.

2. Greater delay than the court were led to expect has taken place in furnishing these returns, which, they have noticed with much regret, in some districts have never been kept up and sent to the revenue commissioner. Two returns, however, prepared with great accuracy, and in strict conformity to the circular order above quoted, have been received, and carefully revised by the court; and as it is evident from these statements that the present system of selling landed property by the collectors of revenue, is productive of the most discreditable delay in the execution of the decrees of the courts, and that the collectors of revenue, either from want of time or other causes, have in many instances evinced great inattention to this very important part of their duty, the court deem it highly expedient that the subject should be brought without further delay to the notice of government, with a view to the reconsideration of the necessity of passing the Act forwarded with my letter, No. 1914 of the 19th July 1839, with such modifications as may appear, on further deliberation, to be called for.

3. I am directed by the court to forward, for the purpose of being laid before the Right honourable the Governor of Bengal, copy of the returns submitted by Mr. Pulton, the judge of the 24-Pergunnahs, and Mr. Cardew, the judge of Tipperah. An examination of these documents will at once satisfy his Lordship of the urgent necessity that exists for empowering the courts of civil judicature to sell all landed property in execution of their own decrees.

4. In the 24-Pergunnahs the references made from the judicial to the revenue authorities appear to have been generally pending for 18 months; and in the majority of cases the collector has furnished no report whatever. In one instance, a reference made by the sudder ameen in March 1831, remained altogether unanswered. Two other instances of references, made in 1836 and 1837, are to be found, in which cases no sale of the property has been hitherto effected.

5. The return from the 24-Pergunnahs, however, may be pronounced to be highly satisfactory when compared with the state of things in the district of Tipperah. The first case on the Tipperah statement appears to have been referred to the collector in December 1836. In May 1840 the collector states the lands were sold by him on the 9th April 1840, or after three years and a half; but up to the date of the return, 30th June 1840, the account sale had not been confirmed by the commissioner. The second case in the statement is one of a similar nature.

6. The next case on the list that will particularly attract the notice of his Lordship is the 5th. In this the reference was made to the collector in June 1837, but up to June 1840 no report whatever had been furnished. In cases 6 and 7 five proceedings appear to have been sent to the collector from the court, calling his attention to the subject, but no notice whatever had been taken of the references.

7. In the 10th case the reference was made in July 1835, more than five years ago. The collector reports that the lands have been sold on account of arrears due to government, and that the officers of the collectorate have been called on to state the right of the defendant to a share in the surplus of the sale. The judge considers the reasons assigned by the collector to be "satisfactory"; the court consider them to be quite the reverse. Here is a decree holder entitled to a certain sum of money in 1835, and who, owing to the vexatious delays of the office, has been kept out of his money for nearly five years.

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8. In cases Nos. 11 and 12 six proceedings appear to have been sent to the collector without effect, or even notice; in cases Nos. 21 and 22, the references have been pending before the revenue authorities for eight years; in many other instances the references appear to have been pending for two, three, four, and five years. In case No. 28, which had been pending before the collector for five years, that officer states, apparently under an idea that he is only performing his duty, that "orders have been passed to ascertain whether there are any objections to forward the proceeds of sale to the civil court;" forgetting entirely that the sale had been made under the express orders of the court, and that it was the court, and not the collector, that had to decide on these objections.

9. In case No. 37, which was referred to the collector nearly four years ago, that officer appears lately to have requested the court to ascertain "who was the real possessor of the estate;" and in case No. 30 no less than 11 proceedings appear to have been sent to the collector without success, the case having been referred to the revenue authorities about two years ago. In many other instances two, three, and four calls appear to have been made on the collector without any effect whatever.

10. It is unnecessary for the court to bring other instances to the particular notice of the Right honourable the Governor, as they must already have satisfied his Lordship that the present system, as existing in the 24-Pergunnahs and in Tipperah, is discreditable both to the judicial and to the revenue mofussil authorities: to the judicial officers, in not having reported to this court the delay that had occurred in carrying the orders of their courts into effect; and to the revenue, in the neglect of duty on their parts that these statements have brought to light.

11. The remedy for the irregularities which have been found to exist in these two districts (and which will, the court apprehend, be found to prevail more or less throughout the Bengal presidency) will, the court feel satisfied, after a full consideration of this subject, be found in the draft of the Act they have directed me to submit with this letter; and should the draft as it now stands be approved of by his Lordship, the court will be prepared to frame such rules of practice for the guidance of the subordinate courts of judicature as will, they feel assured, protect the just rights of government, and enable the judicial authorities to carry out, without delay, the execution of their decrees, by enforcing the just payment of debts, and putting owners in possession of the property decreed to them in a much more efficient manner than the returns now submitted would show, as far as relates to these two districts, to have been heretofore the case.

I have, &c.

Fort William, 1 January 1841. (signed) *J. Hawkins*, Register.

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1. It is hereby enacted, that from the 1st of —— 1841, such parts of Regulation XLV. of 1793, Regulation XX. of 1795, Regulation XXVI. of 1803, and VII. of 1825, of the Bengal Code, and of any other Regulation or Act in force as relate to the sale by collectors of landed property of any description, in satisfaction of decrees of the courts of civil judicature, or in execution of any other judicial process, be repealed.

2. And it is hereby enacted, that the courts of civil judicature within the territories subject to the presidency of Fort William in Bengal, shall be empowered to sell, or to cause to be sold, lands of every description in execution of any decree or judicial process in virtue of which such sale may be authorised by the Regulations or Acts now in force, or which may hereafter be enacted.

3. And it is hereby enacted, that the Courts of Sudder Dewanny Adawlut within the territories subject to the presidency of Fort William in Bengal, shall frame such rules of practice for the attachment and sale of property in satisfaction of decrees or other judicial process of the courts of civil judicature, as may appear necessary, and shall submit the same to the Governor-general of India in Council; and that the said rules, when approved of by the said Governor-general of India in Council, shall be of the same force as if they were inserted in this Act.

(signed) *J. Hawkins*, Register.

QUARTERLY REPORT of Requisitions to Collectors of Zillah 24-*Pergunnahs* and *Calcutta* by the Civil Courts of Zillah 24-*Pergunnahs*, relating to Execution of Decrees remaining incomplete on the 30th December 1839.

Names of Parties.	Dates of Reference.	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
To Collector of 24-Pergunnahs by Principal Sudder Ameen:				
Gunga Govind Mundal, plaintiff, *v.* Nellamber Banerjee.	- 28th June 1834 referred for sale.	- - To sell defendant's lands in mouzah Sursoonah, pergunnah Magoorah, 421 begahs 15 collahs.	- - The collector, on the 7th September 1839, sent 2,463 rupees, and stated that the remaining property would be sold soon.	- - The collector should proceed to an immediate sale.
Kallee Kant Roy and heirs of Ram Coomeer Roy, plaintiffs, *v.* Anundchunder Roy, &c., defendants.	- - Referred for sale 20th September 1839.	- - To sell 26 begahs of land situate in Bursah, pergunnah Magoorah.	- - The collector has furnished no report.	- ditto.
Kally Kisto Nang, plaintiff, *v.* Bydnath Roy, &c., defendants.	- - Referred for sale 2d September 1839.	- - To sell a third share of 10 mouzahs of a talook, situate in pergunnah Surfurazpoor, mouzah Ramjeebunpoor, &c.; 16 mouzahs, No. 951, the sudder jumma of which is *Rs.* 555. 7. 8.; and in Kismut Ramnuggur, pergunnah Meernuggur, 7 mouzahs, No. 1029, sudder jumma, *Rs.* 88. 7. 7.; and talook, No. 989, mouzahs Huldar, Khulla, &c., pergunnah Preunuggur, sudder jumma, *Rs.* 1,486. 7. 11.	- - ditto - -	- - The collector should sell the lands as soon as possible, and transmit proceeds to this court.
Koowar Sulh Churee Ghosaul, plaintiff, *v.* Luckenarain Mundal &c., defendants.	- - Referred for sale 3d January 1839. 25th May lotbundee papers corrected and retuned to collector. Takeed sent 25th November 1839.	- - To sell a half of the 14 collahs of land belonging to defendants, situate in mouzah Kidderpoor, pergunnah Magoorah.	- - Ditto. The lotbundee papers were corrected and sent.	- ditto.
Nyas Luskur, plaintiff, *v.* Nund Mundul.	- Ditto, 7th June 1839.	- - To sell 21 begahs 11 collahs, situate in mouzah Ransdhunnee, pergunnah Magoorah.	No kyfeut as yet received	- ditto.
Sudder Ameen:				
Kissenmoonee Dossee, plaintiff, *v.* Doohhinee Beebee, defendant.	- Ditto, 29th December 1839. 24th June 1839 takeed sent.	- - To sell 2 begahs of land, situate in Kunder Pungger, Baleah.	- - The collector, on the 9th August 1839, stated that the 13th September was fixed for the day of sale.	- - If the sale has been effected, the proceeds should be remitted without delay.
Hurnarain Mundul, plaintiff, *v.* Luckhenarain Mundul, defendant.	- Ditto, 7th August 1839.	- - To sell 344 begahs 2 collahs of land belonging to defendant, situate in mouzahs Chuckmunnick and Taheir.	- - The collector has furnished no kyfeut.	- - The sale should be effected as soon as possible.
Bulram Serear, plaintiff, *v.* Gungadhar Holdar, defendant.	- Ditto, 30th November 1839.	- - To sell 1 kung 3 gundah and 1 kraut of the 3-anna share of talooka mouzah Bhuntpurrat, pergunnah Havillee Shahir, and 2 begahs out of the 6 begahs of his residence, with appurtenances thereon.	- - ditto - - -	- ditto.
Tarrachand Ghose, decree holder, by purchase from Mr. Lacklal, plaintiff, *v.* L. P. Moore.	- - Referred for sale on the 6th December 1839.	- - A soonderbund grant, No. 1, attached to pergunnah Balunda, measuring 1,000 begahs.	- - ditto - - -	- ditto.
Moonseff of Russah:				
Kissenchunder Mookerjee, plaintiff, *v.* Moojdeen Lushkur, defendant.	- Ditto, 17th April 1839.	- - To sell, after excepting a bujyah and its appurtenances, 12 begahs 19 collahs, 3 c. of land situated in mouzahs Punchoo and Kallickapoor, pergunnah Bulleah.	- - ditto - - -	- ditto.

(continued)

—	Names of Parties.	Dates of Reference.	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion those Reasons.
	Moonseff of Russah—*continued.*				
11	Ramhurry Poollee and others, plaintiffs, *v.* Ramkissen, &c., defendants.	- - Referred for sale on the 31st July 1839.	- - To sell 29 begahs 10 collahs of land situate in mouzah Kullooah, pergunnah Masoorah.	- - The collector has furnished no kyfeut.	- - The sale sho be effected as s as possible.
12	Sheikh Mookeereumi, plaintiff, *v.* Sheik Mookeem Mistrig.	- - Ditto, 31st July 1839.	- - To sell 15 begahs 10 collahs of land, with house and garden, situate in mouzah Chunderdeep, pergunnah Khashpoor.	- - ditto - - -	- ditto.
13	Nemye Chand Roy, plaintiff, *v.* Gooroo Doss Tautie, son of Perithram Tautie.	- - Ditto. On the 27th December 1839 a map of 7 begahs 16 beswas of land was forwarded, on which claim had been abandoned.	- - To sell 20 begahs 19 ½ collahs of land, situate in mouzah Rullerbareah, pergunnah Azemabad.	- - The collector, on the 13th November 1839, stated that the lotbundee of 13 begahs 3 ½ biswas is ready, and begged to know if he would sell the remaining portion.	- - The colle should sell whole of the p perty.
14	Bhyrobe Chunder Roy Chowdery, plaintiff, *v.* Kyamoodeen, &c., defendants.	- - Ditto, 19th November 1839.	- - To sell 21 begahs 2 ½ collahs of land, situate in Chuck Punnapoor.	- - The collector has furnished no kyfeut.	- - An immed sale should be fected, and p ceeds transmit
	Moonseff of Sulkeah:				
15	Bishonath Ghose, plaintiff, *v.* Ramchunder Ghose, defendant.	20 August 1837	- - To sell 6-anna share of dry and doobee land, situate in mouzah Bygurree, pergunnah Burrow.	- The collector reported that the 22d November 1839 was the day fixed for sale.	- - If the sale been effected, proceeds sho be sent imm ately.
	Moonsiff of Kuddumgochee:				
16	Kalachand Bhose, plaintiff, *v.* Ramcoomar Sirdar.	- - Referred for sale 4th April 1839. 20th June takeed sent. On 26th September 1839 papers corrected and sent.	- - To sell 60 begahs in mouzah Sharaburreah Kismut Ramkessenpoor, pergunnah Aununpoor; and 43 begahs 2 collahs situate in mouzah Otterhunt.	- - On the 13th July 1839 the collector sent the papers for correction sent on the 26th September 1839.	- - The colle should proceed an immediate s
17	Goopee Mohun Roy, plaintiff, *v.* Bulram Doss Kybart.	- Ditto, 13th July 1839. 22d November 1839 takeed sent.	- - To sell 14 begahs of land, situate in mouzah Prashandpoor, pergunnah Annespoor	- - The collector has furnished no kyfeut.	- ditto.
	Moonsiff of Nawabgunge:				
18	Muss. Bhagbullee Dobbea, plaintiff, *v.* Bissonath Bannerje.	- - Ditto, 10th April 1839.	- To sell 11 biswas of land, situate in pergunnah Sukoohar, pergunnah Calcutta.	- - ditto - -	- ditto.
19	Casseenath Chuckerbully, plaintiff, *v.* Moocheeram Santra.	- Ditto, 25th July 1839.	- - To sell half a begah of land, situate in mouzah Pakoorah, pergunnah Calcutta.	- - ditto - -	- ditto.
	To the Deputy Collector of Calcutta by Principal Sudder Ameen:				
20	Mothoor Mohun Chuckerbully, plaintiff, *v.* Shibnarain Ghose, defendant.	- Ditto, 15th August 1839.	- - To sell 3 begahs of land in mouzah Tiljallee Dhee Birgee, and 5 begahs 12 collahs in mouzah Goobrah, and 7 begahs 2 ½ collahs in Kooliah Tengrah Dhee Soorah.	- - The collector has furnished no kyfeut since the papers were corrected and returned.	- - The colle should sell lands as soo possible.
	Sudder Ameen:				
21	Mirzah Yakoob, plaintiff, *v.* Bhaloo Khan, &c., defendants.	- - Ditto, 19th March 1831. On the 5th November the papers were corrected and returned.	- - To sell 14 begahs of land in mouzah Kooleah Debee Punchawongong.	- - On the 5th November 1839 the collector reported that he would forward the sale proceeds after the sale was confirmed.	- If confirmed proceeds sh be forwa quickly.
22	Mr. J. J. Joseph, plaintiff, *v.* Sheer Ally.	- - 31st May 1836. 24th June a takeed sent.	- - To sell 1 begah 10 collahs of land, situate in Soorah Debee Punchawongong.	- - On the 26th November 1839 the collector reported that he would proceed to an immediate sale.	- If sold, the ceeds should sent early.

	Names of Parties.	Dates of Reference.	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
	Sudder Ameen—*continued.*				
3	Kallypersand Holdas, plaintiff, *v.* Kissenmohun Sircar.	- - Referred for sale 1st February 1837. 16th February 1839 a report called for to inquire the bid offered for the land.	- - To sell 1 begah of land, with house and tank, situate in Chuckerbarry Bellallah Debee Punchawongong.	- - The collector, on the 11th September 1839, reported that the 27th instant was fixed for the day of sale.	- - If sold, the proceeds should be sent early.
4	Ramdhun Dutt, plaintiff, *v.* Radshoonder Miller.	- Ditto, 12th December 1839.	- - To sell 5 begahs 10 collahs of land, with appurtenances, in Chuckerbarry Punchawongong.	- - The collector has sent no kyfeut.	- - The collector should proceed to an immediate sale.
5	Monabebee, plaintiff, *v.* Shuteh Chowdree.	- - Ditto, 3d November 1839.	- - To sell 6 begahs 10 collahs of land, situate in mouzah Kulleea Debee Moonburpoor.	- - ditto - - -	- ditto.
6	Ramchand Mittre, &c., plaintiffs, *v.* Deegunbarree Bustome, &c., defendants.	- Ditto, 17th February 1839. 16th Aug. 1839 takeed sent.	- - To sell 5 biswas of land in mouzah Bhowaneepoor.	- - On the 9th November 1839 the collector reported that he had not then received a confirmation of the sale.	- - The collector should send the proceeds immediately after the confirmation of sale.
7	Rajchunder Hagra, plaintiff, *v.* Beemullah Dossee, defendant.	- Ditto, 23d September 1839.	- - To sell 3 collahs of land, with house, situate in Entally Dhee Punchawongong.	- - No kyfeut as yet received.	- - The collector should effect an immediate sale.

(True copy.)

Zillah, 24-Pergunnahs, Civil D. Court, 8 April 1840.

(signed) *J. Hawkins,* Register.

(True copy.)

(signed) *J. H. Patten,* Officiating Judge.

Report of Requisitions to Collectors of *Tipperah* and *Bullooah*, by the Civil Courts of Zillahs *Tipperah*, relating to Execution of Decrees remaining incomplete on the 30th June 1840.

	Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reason.
1	Tulluck Chunder Roy *v.* Colly Sunker Roy and others.	21 Dec. 1836	- - To sell defendants' lands in pergunnah Noornuggur, zillah Tipperah.	- - It appears from a roobakarree of the collector of Tipperah, dated 5th May 1840, that the rights and interests of the defendants were sold by public sale on the 9th April 1840, and the account sale forwarded to the commissioner for confirmation.	- - The reasons assigned by the collector are satisfactory.
2	Tulluck Chunder Roy *v.* Colly Sunker Roy and others.	21 Dec. 1836	- - ditto - -	- - - ditto - - -	- ditto.
3	Tulluck Chunder Roy *v.* Groodross Deb and others.	6 June 1836	- - ditto - -	- - It appears from a roobakarry of the collector of Tipperah, dated 27th March 1840, that orders have been passed by him to ascertain whether there are any government claims on the estate sold, after which the amount sale will be forwarded.	- ditto.
4	Tulluck Chunder Roy *v.* Sheebnath Dhur and others.	20 Dec. 1836	- - ditto - -	- - The rights and interests of the defendants were sold by public sale on the 9th April 1840, and the account sale forwarded to the commissioner for confirmation.	- ditto.
5	Ransunder Seir *v.* Doorgachurn Kubra.	27 June 1836	- - To sell defendant's lands in pergunnah Mehercool, Pohur Kalla, and Munhellah, zillah Tipperah.	- - - none - - -	- - No reasons assigned by the collector, although a proceeding was sent to him on the subject, on the 23d June 1840.

(*continued*)

—	Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reasons.
6	Berjomohun Shah *v.* Dewan Tohurally.	26 Jan. 1839	- - To sell defendant's lands in pergunnah Seryle, zillah Tipperah.	- - - none - - -	- - No reasons assigned by the collector, although five proceedings have been sent to him on the subject.
7	Tupessaram *v.* Ramjoy Chowdry.	16 Jan. 1839	- - To sell defendant's lands in pergunnah Noornugger, zillah Tipperah.	- - - none - - -	- ditto.
8	Gour Kissen Doss *v.* Byrubchunder Roy.	16 Aug. 1838	- - To sell defendant's lands in pergunnahs Elkudpoor, Kassempoor, and Muchoonkhalee, zillah Tipperah.	- - It appears from a robakarry of the collector, dated 15th February, 1840, that orders have been issued by him for the preparation of the lotbundee.	- - The reasons assigned by the collector not appearing to be satisfactory, a proceeding was sent to him on the 23d June 1840, on the subject.
9	Maharaja Kissen Kishore Manick *v.* Juggomohun Seeba.	7 Nov. 1838	- - To sell defendant's lands in pergunnah Mahercool, zillah Tipperah.	- - - none - - -	- - No reason assigned by the collector, although five proceedings have been sent to him on the subject.
10	Dyah Mooe *v.* Shurbmangullah.	27 July 1835	- - To sell defendant's lands in pergunnah Hoomnabad, zillah Tipperah.	- - The lands of the defendant were sold for arrears of government revenue, and a report has been required from the tonjhee navies and treasurer, relative to the rights of the share of the defendant to the surplus of sale.	- - The reasons assigned by the collector are satisfactory.
11	Rampersand Tewarry *v.* Rogoonath Burdhan.	29 Jan. 1839	- - To sell defendants' lands in pergunnah Noornuggur, zillah Tipperah.	- - The lands of the defendant having been pledged in security of the former sherishtadar, a reference has been made to the commissioner to ascertain whether the said lands are to be put up to sale or not.	- - Since which two proceedings have been sent to the collector on the subject.
12	Telluck Chunder Roy and others *v.* Bishenat Roy.	10 Nov. 1838	- - ditto - -	- - - none - - -	- - No reasons assigned by collector, although six proceedings have been sent to him on the subject.
13	Ramsantose Seen *v.* Rajkissen Burman.	20 June 1839	- - ditto - -	- - - none - - -	- none.
14	Ramsurnshaw *v.* Bhobanath Doss.	27 June 1839	- - ditto - -	- - - none - - -	- - A person presented a durkhast claiming the land, consequently a roobakarry was sent to collector, requesting him to postpone the sale until further orders.
15	Punnvollah *v.* Phoolbebee and others.	22 Aug. 1839	- - To sell defendants' land in pergunnah Singergong, zillah Tipperah.	- - - none - - -	- none.
16	Mr. F. Courjon *v.* Sumbhoo Chunder.	27 May 1840	- - To sell defendants' land in pergunnah Buldakhal, zillah Tipperah.	- - - none - - -	- none.
17	Salt Agent of Bullooah *v.* Sheebanund and others.	27 Dec. 1838	- - To sell defendants' land, Chier Jugdanund, zillah Bullooah.	- - The lands of the defendants were sold by public sale on the 24th January and 23d April 1840.	- - The amount of the sale has not yet been received.
18	Salt Agent of Bullooah *v.* Ramlochun Chuckerbulty.	16 May 1839	- - to sell defendants' land in pergunnah Singergong, zillah Tipperah.	- - Orders have been passed to ascertain whether any demand of government is due from the estate.	- - The reasons assigned by collector are sufficient, and a proceeding has been sent to him on the subject, on the 29th June 1840.
19	Deputy-collector of Bullooah *v.* Mohoboobun Mesha.	23 July 1839	- - To sell defendant's lands in pergunnah Dundra, zillah Bullooah.	- - A proclamation for the sale of the lands of the defendant has been issued.	- ditto.
20	Neelmonee Bhose *v.* Groodos Gohoo.	2 March 1837	- - To sell defendant's lands in Tippera Forokabad, zillah Tipperah.	- - A reference has been made to the Civil Court, relating to the name of the possessor of the estate.	- - A reply to the reference was sent on the 4th June 1840.

	Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reasons.
	Sellarain Dobay *v.* Muss[t] Phellabebee and others.	8 March 1832	- - To sell defendants' lands in pergunnah Khunchunpoor, zillah Bullooah.	- - The sale was postponed in consequence of the heir of the defendant being a minor, and his estate being under the management of the Court of Wards.	- - The decree holder presented a petition on the 17th August 1839, that the heir of the defendant having arrived to his majority, since which four proceedings have been sent to the collector on the subject.
2	Sodaram Dobay *v.* Golam Ensuff.	8 March 1832	- - ditto - -	- - - ditto - - - -	- ditto.
3	Ramlochum Burman *v.* Assudoollah.	3 Jan. 1832	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - The rights and interest of the defendant were sold by public sale in February 1840, and the amount sale forwarded to the commissioner for his confirmation.	- - The amount of the sale has not been received, although proceeding was sent to the collector on the subject.
4	Chunder Mudeb, on the part of Subsoondooree *v.* Muss[t] Luckheepriah.	26 April 1837	- - To sell defendant's lands in pergunnah Singergong, zillah Tipperah, and pergunnah Bullooah, zillah Bullooah.	- - The collector of Tipperah states, that the sale of the defendant's property was postponed, according to a petition presented by a decree holder, and the collector of Bullooah states, that until the heavy claim of government on the estate is realized the estate cannot be sold for the claim of others.	- - The reasons assigned by the collector are satisfactory, since which a roobakarry has been sent to that officer on the subject.
5	Maharajah Kishen Kishore Mamek *v.* Collysunker Chowdry.	29 Nov. 1837	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - The lands of the defendant were sold in another case, and the account sale forwarded to the commissioner for his confirmation.	- - The reasons assigned by the collector are satisfactory.
6	Shamsoonder and others *v.* Ramlochun Chowdry.	16 May 1839	- - To sell defendant's lands in pergunnah Narampoor and Mahercool, zillah Tipperah.	- - - none - - -	- - No reasons assigned by collector, although two proceedings were sent to him on the the subject.
7	Moonshee Podar *v.* Tureeza Bannoo.	16 Dec. 1839	- - To sell defendants' lands in pergunnah Bullooah, zillah Bullooah.	- - - none - - -	- none.
8	Beshonath Roy *v.* Mahomed Nizah and others.	28 Jan. 1835	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - Orders have been passed to ascertain whether there are any objections to forward the proceeds of sale to the Civil Court.	- - Since which two proceedings have been sent to the collector on subject.
9	Kishen Govind Bose *v.* Mahomed Ellabuse.	20 Feb. 1837	- - To sell defendants' lands in pergunnah Bulloopoor and Bullooah, zillah Bullooah.	- - - none - - -	- none.
30	Juggohmohun Dhur *v.* Sumboo Chunder Burdhun.	12 June 1838	- - To sell defendant's lands in pergunnah Gungamundul, zillah Tipperah.	- - - none - - -	- - Eleven proceedings have been sent to the collector on the subject, but no reply has been received.
31	Kebul Kishen Serinah *v.* Shaik Dowlut and others.	1 Sept. 1837	- - To sell defendants' lands in pergunnah Noornuggur, zillah Tipperah.	- - The lands of the defendants were sold in another case on the 9th April 1840, and the account sale forwarded to the commissioner for his confirmation.	- - The reasons assigned by the collector are satisfactory.
32	Goordoyal Dhoss *v.* Bishonath Dhur.	2 May 1838	- - ditto - -	- - The lands of the defendant were sold in another case, and the account sale forwarded to the commissioners, for confirmation.	- ditto.
33	Ramlochun Burman *v.* Chundernath Burman.	22 Feb. 1839	- - ditto - -	- - - none - - -	- - No reasons assigned by the collector, although four proceedings have been sent on the subject.
34	Muss[t] Doorpasee *v.* Bhowanny Sunker and others.	29 Jan. 1839	- - To sell defendants' lands in pergunnah Buldakhul, zillah Tipperah.	- - Orders have been passed for the preparation of the lot.	- - The reasons assigned by the collector are satisfactory.
35	Bendrabun Shah *v.* Juggut Issurry.	5 Sept. 1839	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- - Two proceedings have been sent to the collector on the subject.

(*continued*)

—	Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reasons.
36	Takoorpersand Tuvarry *v.* Allee Mehendee Khan.	12 Sept. 1838	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - A reference has been made to the Civil Court, respecting the disposal of the amount proceeds of the sale to the different claimants.	- - A reply to the refe ence was made on th 29th June 1840, re questing the collecto to send the money t the court.
37	Ramsurn Shah *v.* Ranjdoolub and others.	13 Sept. 1836	- - ditto - -	- - A reference has been made to the Civil Court, respecting the name of the real possessor of the estate.	- - A reply to the refe ence was made on th 16th May 1840.
38	Sheebshah Sookul *v.* Golucknath Roy.	5 June 1839	- - ditto - -	- - - none - - -	- - Four proceeding have been sent to th collector on the sub ject.
39	Mahomed Buser *v.* Ramanund Serina.	17 April 1839	- - To sell defendant's lands in pergunnah Singergong, zillah Tipperah.	- - Orders have been passed to ascertain the estate, previous to the preparation of the lotbundy.	- - One proceeding ha been sent to the co lector on the subject.
40	Punchanund Ghose *v.* Juggut Isurree.	8 June 1839	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- - Two proceeding have been sent to th collector on the sub ject.
41	Intramony Shah *v.* Kooranee Shah.	19 Aug. 1839	- - ditto - -	- - - none - - -	- - Four proceeding have been sent to th collector on the sub ject.
42	Ramsunker *v.* Wusumoodeen.	17 April 1839	- - To sell defendant's lands in pergunnah Omrabad, zillah Tipperah.	- - The lands of the defendant were sold on the 24th January 1840, and the account sale forwarded to the commissioner for his confirmation.	- - Since which a pro ceeding has been sen to the collector on th subject.
43	Sunker Dessee *v.* Nobodoorgah.	22 Dec. 1839	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- - One proceeding ha been sent to the co lector on the subject.
44	Madub Sing *v.* Goree Sunker.	27 Dec. 1839	- - ditto - -	- - - none - - -	- ditto.
45	Deputy Salt Agent of Bullooah *v.* Mahomed Uffser Oddeen and others.	22 Jan. 1838	- - To sell defendants' lands in Chuckha Urshadeeah, zillah Bullooah.	- - Account sale forwarded to the commissioner for his confirmation.	- - The reasons assigne by the collector are sa tisfactory.
46	Salt Agent of Bullooah *v.* Nueemoodeen and others.	3 June 1839	- - ditto - -	- - A proclamation for the sale of the defendants' lands has been issued.	- ditto.
47	Rogonath Roy *v.* Gourmohun Roy and others.	20 June 1839	- - To sell defendants' lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- - One proceeding ha been sent to the co lector on the subject.
48	Salt Agent of Bullooah *v.* Sreeram Dutt.	9 April 1839	- - To sell defendant's lands in Chur Moothoval, zillah Bullooah.	- - The orders of the commissioner for the sale of the defendant's lands were erroneously sent to the collector of Tipperah, since the receipt of which orders have been passed for the preparation of the lotbundee.	- - The reasons assigne by the collector ar satisfactory.
49	Raja Kissen Kishore Manick *v.* Hurry Kissen Seen, &c.	29 June 1839	- - To sell defendants' lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- - Three proceeding have been sent to th collector on the sub ject.
50	Raja Kissen Kishore *v.* Bishonath Dhur.	20 July 1839	- - ditto - -	- - - none - - -	- - Two proceeding have been sent to th collector on the sub ject.
51	Sheebjoy Thakoor *v.* Doorgachura Deb.	3 Jan. 1839	- - To sell defendant's lands in pergunnah Putterghutta, Mehercool, and Mumluttah, zillah Tipperah.	- - - none - - -	- - One proceeding ha been sent to the co lector on the subject.
52	Shoorjoopersiard Wastee *v.* Juggomohun Sobah.	2 Jan. 1839	- - To sell defendant's lands in pergunnah Dhunnanjoy Nugger, zillah Tipperah.	- - Perwannah issued to the lotnovees to prepare the lotbundee.	- - The reasons assigne by the collector ar satisfactory.
53	Sook Cheenee Tewarry *v.* Rogonath Roy.	23 Sept. 1839	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- - One proceeding ha been sent to the co lector on the subject.

	Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reasons.
4	Raja Kishen Kissore Manieh *v.* Juggomohun Soba.	12 June 1839	- - To sell defendant's lands in pergunnah Dhunnunjoy Nuggur, zillah Tipperah.	- - - none - - -	- The proceedings have been sent to the collector on the subject.
5	Seebnath Sen *v.* Bhyrubchunder.	16 May 1839	- - To sell defendant's lands in pergunnah Noornugger, zillah Tipperah.	- - - none - - -	- - A person having presented a petition as a mozahur, a proceeding was sent to the collector to postpone the sale until further orders.
6	Seebnath Sein *v.* Byrubchunder.	16 May 1839	- - ditto - -	- - - none - - -	- ditto.
7	Raja Kissen Kishore Munich *v.* Colly Sunker Roy.	22 Nov. 1839	- - ditto - -	- - - none - - -	- - One proceeding has been sent to the collector on the subject.
8	Mr. G. Lamb, *v.* Nobokishen Roy and others.	9 Aug. 1839	- - To sell defendants' lands in pergunnah Mohabulpoor, zillah Tipperah.	- - - none - - -	- - Three proceedings have been sent to the collector on the subject.
9	Rajah Kisshen Kissore Marrick *v.* Colly Sunker Roy and others.	5 July 1839	- - To sell defendants' lands in pergunnah Noornuggur, zillah Tipperah.	- - none - - -	- ditto.
0	Rajah Alenoollah *v.* Seebchunder Doss.	9 Jan. 1839	- - To sell defendant's lands in pergunnah Buldakhul, zillah Tipperah.	- - - none - - -	- none.
1	Rajah Alemoollah *v.* Merzah Mahomed.	9 Jan. 1839	- - ditto - -	- - - none - - -	- none.
2	Goburdhan Podar *v.* Doorgachurn Dhur and others.	13 May 1839	- - To sell defendants' lands in pergunnah Olter Gunganuggur, zillah Tipperah.	- - Orders have been lately passed to ascertain whether there are any government demands on the estate.	- - The reasons assigned by the collector are satisfactory.
3	Sheebshah Sookul *v.* Deenanath Bardun.	4 June 1839	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- Orders have been lately passed for the preparation of the lot-bundee.	- ditto.
4	Seeb Golam Wuslee *v.* Ramgovind Gopt and others.	8 Nov. 1838	- - To sell defendants' lands in pergunnah Munhillah, zillah Tipperah.	- - Account sale having been forwarded to the commissioner for his confirmation.	- ditto.
5	Sibnarain *v.* Kassenath Burman.	23 May 1838	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- - Two proceedings have been sent to the collector on the subject.
6	Sheddee Gopaul Messer *v.* Gourhurree Dhur.	16 Aug. 1839	- - To sell defendant's lands in pergunnah Oltergun Ganuggur, zillah Tipperah.	- - - none - - -	- - The sale was ordered to be postponed, according to the petition of a moyahim, and on the 20th April 1840 a proceeding was sent to the collector to renew the sale.
7	Holassram Shah *v.* Rampuan Doss.	25 Aug. 1835	- - To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	- - - none - - -	- none.
8	Ramdoolal Deb and others *v.* Sheonath Dhur and others.	25 Aug. 1835	- - ditto - -	- - - none - - -	- none.
9	Bishonath Roy *v.* Kollysunker Burnam and others.	2 April 1836	- - ditto - -	- - - none - - -	- none.
0	Ramgopal Pall *v.* Ramjoy Dhur and others.	2 April 1836	- - ditto - -	- - - none - - -	- none.
1	Telluckchunder and others *v.* Seebchunder Doss.	11 July 1836	- - ditto - -	- - - none - - -	- none.
2	Telluckchunder and others *v.* Chumpah and others.	11 July 1836	- - ditto - -	- - - none - - -	- none.

—	Names of Parties.	Dates of Reference.	Substance of Requisitions.	Reasons assigned by Collectors for Non-execution.	Judge's Opinion of those Reasons.
73	Telluckchunder and others *v.* Colly Kinker Doss.	11 July 1836	To sell defendant's lands in pergunnah Noornuggur, zillah Tipperah.	none	none.
74	Telluckchunder and others *v.* Cossynath Purdhun and others.	11 July 1836	ditto	none	none.
75	Holasram Shah *v.* Luckenarain Deb.	6 Dec. 1836	ditto	none	none.
76	Kossachunder and others *v.* Mussᵗ Suckee, &c.	31 Dec. 1836	ditto	none	none.
77	Telluckchunder and others *v.* Juggomohun Ghose.	31 Dec. 1836	ditto	none	none.
78	Telluckchunder and others *v.* Kissen Kishore Burdun.	22 Aug. 1837	ditto	none	none.
79	Golucknath Roy *v.* Kewul Kishen Sermer.	5 April 1837	ditto	none	none.
80	Rogoonath Roy *v.* Mussᵗ Unnodah Moe.	16 Dec. 1836	ditto	none	none.
81	Ramdyal Sookul *v.* Mussᵗ Dyamunte and others.	5 April 1837	ditto	Orders have been lately passed on the lotnovees to prepare the lotbundee.	The reasons assigned by the collector are satisfactory.
82	DoorgoomoneeWuzar *v.* Bishonath Chowdry.	5 April 1837	ditto	ditto	ditto.
83	Selram Sing *v.* Kewal Kissen Sirma.	5 April 1837	ditto	none	none.
84	Mohelall Patuck *v.* Juggomohun Dhur.	5 April 1837	ditto	none	none.
85	Mussᵗ Arradunnee *v.* Goopee Nath Dhur.	31 Dec. 1836	ditto	none	none.
86	Mustᵗ Collylarah *v.* Bishonath Dhur.	5 April 1837	ditto	none	none.
87	Mussᵗ Collylarrah *v.* Beshonath Dhur.	5 April 1837	ditto	none	none.
88	Telluckchunder and others *v.* Juggomohun Dhur and others.	31 Dec. 1836	ditto	none	none.
89	Sheebjoy Thakoor *v.* Mussᵗ Chundra Kullah.	5 April 1837	ditto	none	none.
90	Ramsurn Shah *v.* Odye Auditor and others.	25 Aug. 1837	ditto	none	none.
91	Rajah Kissen Kishore Manick *v.* Ramanath Sirmah and others.	30 June 1838	ditto	none	none.
92	Ramdolall Deb and others *v.* Ramghitty Dhur.	19 Mar. 1838	ditto	none	none.
93	Sheebnath Seen *v.* Casseenath Dhur and others.	17 Nov. 1838	To sell defendant's lands in pergunnahs Oolter, Gunganugger, &c. Moornuggur, zillah Tipperah.	none	none.
94	Sheebnath Seen *v.* Nobokissen Dhur.	19 Mar. 1838	ditto	none	none.
95	Ditto	19 Mar. 1838	ditto	none	none.
96	Juggernath Deo *v.* Ulloofah Bebee.	23 Aug. 1838	To sell defendant's lands in pergunnah Noornugger, zillah Tipperah.	none	none.
97	Ramsurn Shah *v.* amkissub Dhur.	19 Mar. 1838	ditto	none	none.

Names of Parties.	Date of Reference.	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
Buddeen Chunder Shah *v.* Kusseenath Dhur, wife, and others.	17 Nov. 1838	- - To sell defendant's lands in pergunnahs Noornuggur and Olter Gunganugger, zillah Tipperah.	- - none - - - -	- - none.
Buddeen Chunder Shah *v.* Goopeonath Dhur.	17 Nov. 1838	- - ditto - -	- - Orders have been issued on the lotnovees for the preparation of the lotbundees.	- - The reasons assigned by the collector are satisfactory.
Telluckchunder and others *v.* Rammohun Sein and others.	20 Aug. 1839	- - To sell defendant's lands in pergunnah Noorunggur, zillah Tipperah.	- - - none - - -	- - none.
Telluckchunder and others *v.* Bishen Bhukt Morrain.	31 Dec. 1838	- - ditto - -	- - - none - - -	- - none.
Ditto - -	31 Dec. 1838	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Ramkisen Serina and others.	31 Dec. 1838	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Ramgungee Serinah.	31 Dec. 1838	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Kissen Chunder Serina.	31 Dec. 1838	- - ditto - -	- - - none - - -	- - none.
Khoda Buksh *v.* Luckeenarain.	15 June 1839	- - ditto - -	- - Orders have been issued for the preparation of the lotbundee.	- - The reasons assigned by the collector are satisfactory.
Mussᵗ Doorpadee *v.* Mussᵗ Doopudee.	20 Aug. 1839	- - ditto - -	- - - none - - -	- - none.
Sooree Dos Chung *v.* Ramjewun Doss and others.	20 Dec. 1839	- - ditto - -	- - - none - - -	- - none.
Rajah Kissen Keshore Manick *v.* Mussᵗ Afauk.	20 Aug. 1839	- - ditto - -	- - - none - - -	- - none.
Rajah Kissen Keshore Manick *v.* Konymohun Ghose.	20 Aug. 1839	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Srelochun Dhur.	15 May 1839	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Luckeacaut Serina and others.	15 May 1839	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Rugonath Serina.	15 May 1839	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Ramchurn Acharjee.	15 May 1839	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Nobochunder Burdhun.	15 May 1839	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Rogonath Burdhun.	22 Aug. 1839	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Ramgullee Dhur.	15 May 1839	- - ditto - -	- - - none - - -	- - none.
Telluckchunder and others *v.* Issurchunder Sermun.	15 May 1839	- - ditto - -	- - - none - - -	- - none.
Rajah Kissen Kissore Manick *v.* Hurreschunder Burdhun.	20 Aug. 1839	- - ditto - -	- - - none - - -	- - none.
Rajah Kissen Kissore *v.* Nobochunder Burdhun.	20 Aug. 1839	- - ditto - -	- - - none - - -	- - none.
Rajah Kissen Kishore Manick *v.* Rogoonath Burdhun.	20 Aug. 1839	- - ditto - -	- - - none - - -	- - none.

(*continued*)

—	Names of Parties.	Date of Reference.	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
122	Rajah Kissen Kishore Manick *v.* Berjomohun Ghose.	20 Aug. 1839	- - To sell defendant's lands in pergunnah Noorunggur, zillah Tipperah.	- - - none - - -	- none.
123	Bendabun Shaw *v.* Nubee Newaz Khan.	20 Aug. 1839	- - ditto - -	- - - none - - -	- none.
124	Rajah Kishen Kissore Manick *v.* Ramsurro Dhur.	20 Aug. 1839	- - ditto - -	- - - none - - -	- none.
125	Rajah Kishen Kissore Manick *v.* Oboychurn Dhur.	19 Aug. 1839	- - ditto - -	- - - none - - -	- none.
126	Rajah Kishen Kissore Manick *v.* Doorgachurn Burdhun.	16 Sept. 1839	- - ditto - -	- - - none - - -	- none.
127	Telluckchunder and others *v.* Doorgachurn Burdhun.	26 Sept. 1839	- - ditto - -	- - - none - - -	- none.
128	Telluckchunder and others *v.* Bedonath Sudh.	26 Sept. 1839	- - ditto - -	- - - none - - -	- none.
129	Mohellal Pullack *v.* Nobokissen Dhur.	2 Oct. 1839	- - To sell defendant's lands in pergunnah Gunganugger, zillah Tipperah.	- - - none - - -	- none.
130	Mussᵗ Arradhunee *v.* Gopunath Dhur.	2 Oct. 1839	- - ditto - -	- - - none - - -	- none.
131	Ramsunbose Seen *v.* Dhunnunjoy Chowdry.	20 Dec. 1839	- - To sell defendant's lands in pergunnah Norrunggur, zillah Tipperah.	- - - none - - -	- none.
132	Ramsunbose Seen *v.* Goureo Sunker.	20 Dec. 1839	- - ditto - -	- - - none - - -	- none.
133	Bhowanny Sunker Deo *v.* Bessonath Chowdry.	3 Sept. 1839	- - ditto - -	- - It appears, from a roobookarry of the collector, that the land of the defendant was sold on the 14th February 1840.	- - The amount of t sale has not been received.
134	Kessenkanth Baboo *v.* Kavulram Roy.	19 Jan. 1838	- - To sell defendant's lands in pergunnah Mohebulpoor, zillah Tipperah.	- - - none - - -	- none.
135	Mahomed Jaker *v.* Buchoo Bebee,	21 Dec. 1838	- - To sell defendant's lands in pergunnah Torah, zillah Tipperah.	- - - none - - -	- none.
136	Bungshee Buddun Moojoomdar *v.* Mussᵗ Surbanee and others.	21 Dec. 1838	- - ditto - -	- - - none - - -	- none.
137	Issurree Sing *v.* Mohabarut Dutt.	25 July 1839	- - To sell defendant's lands in pergunnah Joogdeah, zillah Bullooah.	- - The land of the defendant was sold on the 7th April 1840, and the account sale forwarded to the commissioner for confirmation.	- - Since which t proceedings were s to collector for the p ceeds of the sale.
138	Goburdhun Tewarry *v.* Mahomed Muneerooddeen.	27 Mar. 1840	- - To sell defendant's lands in tuppeh Joynuggur, zillah Bullooah.	- - - none - - -	- none.
139	Goburdhun Tewarry *v.* Mussᵗ Rugdoheeta and others.	27 Mar. 1840	- - To sell defendant's lands in pergunnah Bullooah, zillah Bullooah.	- - - none - - -	- none.

(True copy.)

Zillah Tipperah, Judge's Office,
the 10th September 1840.

(signed) *C. Cardew*, Judge.
J. Hawkins, Register.

PORT of REQUISITIONS to Collector of *Dacca*, by the Civil Courts of Zillah *Tipperah*, relating to Execution of Decrees remaining incomplete on the 30th June 1840.

Names of Parties.	Date of Reference.	Substance of Requisition.	Reasons assigned by Collector for Non-execution.	Judge's Opinion of those Reasons.
Munee Ram Sirkar *v.* Joyhurrybosoo and others.	19 Mar. 1838	- - To sell defendant's lands in pergunnah Doorgapoor, zillah Dacca.	- - - none - - -	- none.
Salt Agent of Bullooah *v.* Suckeekunth Gazee.	11 Jan. 1839	- - ditto - -	- - - none - - -	- - No reason assigned by the collector, although three proceedings have been sent to him on the subject.
Shumkissore Roy *v.* Samboonath Dutt and others.	11 Jan. 1838	- - To sell defendant's lands in tappeh Ramchorval, zillahs Mymensingh and Gazaresh, in Tipperah.	- - The collector of Mymensingh states, that the lands of the defendant have been sold, but the proceeds were not sent to the civil court, owing to the demand of government not being settled.	- - The reasons assigned by the collector of Mymensingh are satisfactory, and a proceeding has been sent to the collector of Tipperah on the subject.

(True copy.)

Zillah Tipperah, Judge's Office, the 10th September 1840.

(signed) *C. Cardew*, Judge.
J. Hawkins, Register.

(No. 312.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India in the Legislative Department.

Legis. Cons. 29 March 1841. No. 12.

Sir,

As the subject noticed in para. 6 of the Honourable Court's despatch to the Government of Bengal, No. 18 of 1840, dated the 23d December, is under consideration with the Supreme Government, the Right hon. the Governor of Bengal directs that a copy of the paragraph in question be herewith forwarded for the information of the Right hon. the Governor-general in Council.

Judicial Dept.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
2d March 1841.

EXTRACT from a Despatch from the Honourable the Court of Directors of 18, dated the 23d December 1840.

Para. 6. FROM the papers here referred to, it does not appear certain that the land in question was liable to be sold in satisfaction of a decree, as it formed a dependent talook, and not an estate paying revenue to government. The process pursued in cases of the kind is to send the decree of the court to the collector, to be executed by the sale of land. The collector then applies to the commissioner for sanction to sell the land, and afterwards submits the sale for his confirmation. In this case Mr. Harvey, the commissioner, refused to confirm the sale; and being called on for explanation, stated that even supposing the land liable to be sold, the amount of the decree was only *Rs.* 1967. 15. 4., whereas the sale produced *Rs.* 12800; that the property sold was undefined as to its extent, situation, and amount of jumma; that the Regulations require all these points to be correctly ascertained before a sale, and that so unsatisfactory a sale might be expected to produce subsequent litigation. We cannot doubt the propriety of the commissioner's conduct in refusing, under these circumstances, to confirm the sale; and we have adverted to them thus particularly, with the view of desiring that an inquiry may be instituted into the general practice in the case of judicial sales of land.

18 to 23, annulment by Commissioners of sales of land, in satisfaction of a decree of a zillah court.

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land. Care should be taken to limit the amount of the sale as nearly as possible to the amount required for the satisfaction of the decree; and to define accurately the land which is to be sold, and the jumma which it bears.

(A true extract.)

Judicial Department,
2 March 1841.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 39.)

Legis. Cons.
29 March 1841.
No. 13.

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Legislative Dept.

Sir,

Letter, No. 1154, of 30 June 1840.
Letter, No. 1731, of 17 Nov. 1840.
Letters, Nos. 149 & 151, both of 26 Jan. 1841.
Letter, No. 312, of 2 March 1841.

I AM directed to acknowledge the receipt of your letters of the numbers and dates noted in the margin, with their respective enclosures, on the subject of the sale of landed property in execution of decrees of court; and to request that the Right honourable the Governor of Bengal will call upon the Sudder Court to submit a draft of the rules of practice under which they would propose that sales should be held by judicial officers. Until the Governor-general in Council shall see these rules, and be able to judge of the responsibility under which the sales will be made, and their applicability to all descriptions of tenures, his Lordship in Council feels unable to decide as to the expediency of altering the existing law on the subject of sales of land.

2d. As connected with this subject, I am desired to transmit, for submission to the Right honourable the Governor of Bengal, the accompanying copies of a letter, No. 1,626, dated the 17th November last, and of its enclosures, from the secretary to the government N. W. provinces.

I have, &c.

Fort William,
29 March 1841.

(signed) *F. J. Halliday*,
Secretary to the Government of India.

(No. 172.)

Legis. Cons.
14 Feb. 1842.
No. 5.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dept.

No. 141, of the 21st ult.
No. 275, of the 21st May 1841.

IN compliance with the requisition conveyed by your letter (No. 39) dated the 29th March last, I am directed by the Right honourable the Governor of Bengal to transmit, for the information of the Supreme Government, the accompanying letters from the register of the Sudder Court and the secretary to the Sudder Board of Revenue, relative to the existing laws for the sales of land in execution of decrees of court.

I have, &c.

Fort William,
1 February 1842.

(signed) *F. J. Halliday*
Secretary to the Government of Bengal.

P. S.—Please to return the enclosures.

(No. 141.)

Legis. Cons.
14 Feb. 1842.
No. 6.
Enclosure.

From *J. Hawkins*, Esq. Register of the Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

Sud. Dew. Adawt.
Present:
R. H. Rattray,
C. Tucker,
E. Lee Warner, and
J. F. M. Reid, esqs.
judges.

I AM directed to acknowledge the receipt of your letters, Nos. 624 and 794, dated respectively 13th April and 15th June last, together with their enclosures, relative to the existing laws for the sale of landed property, in execution of decrees of court. The reply of the former letter was on the eve of despatch when your latter communication was received; but was withheld, in order to enable the court to dispose of the subject without multiplying letters, and to curtail as much as possible the already lengthened correspondence on the subject.

Messrs. Rattray, Lee Warner, and Reid

2. In reply, I am desired to state, that the majority of the court are of opinion that sales of landed property, in execution of decrees, should be made as at present

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present, by the revenue authorities. On this point they concur in the opinions, expressed in the letters from the Sudder Board of Revenue at Allahabad, and from the secretary to the Government of Agra, dated respectively 6th October and 19th November 1840, and in that from the Sudder Board of Revenue to your address, No. 275, dated 21st May 1841; and they consider that were an Act of the nature of that, a draft of which accompanied the latter communication, passed, and a few rules enacted to carry out details, there would be no cause for complaint, and delay could not arise but from official neglect, for which the guilty individual would of course be answerable.

3. Mr. Tucker was long of the same opinion as his colleagues; and he still considers, that in the event of the government deciding to continue the present system of effecting sales by the fiscal authorities, the commissioners of revenue should possess the power proposed to be conferred upon them by the 2d section of the draft Act submitted by the Sudder Board of Revenue for the Lower provinces. Mr. Tucker, however, has recently seen so much of the delays and obstructions to the execution of money decrees under the system now in force, of calling in the aid of the fiscal authorities to conduct sales in execution of decrees of court, that he is now of opinion that the duty should be altogether transferred to the judical officers.

4. An extract from the proposed reply to your letter, No. 624, of the 24th April last, which was prepared before the receipt of your letter of the 15th June following, will show the opinion entertained by the late Mr. D. C. Smyth, in regard to the subject of the call made upon the court by your first communication, and to the rules for the conduct of sales, which are herewith submitted.

5. Should the government resolve to transfer the duty of conducting sales to the judicial authorities, the court unanimously would suggest the adoption of rules, a draft of which is herewith submitted, as requested in the letter of the Supreme Government of the 29th March last. Mr. Lee Warner is of opinion that the sales should be conducted by an officer appointed for that specific purpose. In this opinion the court generally concur; but they consider that, as an experimental measure, the duty be entrusted to the sudder ameen of the district; and if the plan be found to answer, that then an officer should be appointed, as suggested by Mr. Lee Warner.

6. I am desired to take this opportunity of stating, that in consequence of the unsettled state of the question involved in the correspondence under consideration, the case alluded to in my letter, No. 1,877, of the 5th June 1840, as well as some others of long standing, are still pending on the files of the court.

7. The enclosures of your letters under reply are herewith returned, copies having been retained for the use of this office.

I have, &c.

Fort William,
21 January 1842.

(signed) *J. Hawkins*, Register.

Extract from the Court's proposed Letter, showing the Opinion of the late Mr. *D. C. Smyth.*

Par. 3. Mr. D. C. Smyth has directed me to state, that the court, in his opinion, are now not called upon by government to express any opinion on the general question of transferring the sales of lands in execution of decrees of court, from the revenue to the judicial authorities. That subject, Mr. Smyth observes, has been fully discussed from June 1837 up to the present period. The duty of the court on the present occasion is, in Mr. Smyth's opinion, merely to submit a draft of the rules of practice under which sales of land may be conveniently held by judicial officers.

4. For the above reasons, therefore, Mr. Smyth has purposely refrained from entering upon this part of the subject. He deems it sufficient to observe, that instances of the most harassing nature have been brought under the consideration of the court and of government, showing the great difficulties and grievous delays which, under the present system, impede the due execution of the decrees of the courts of justice. It has become, therefore, absolutely necessary that some alteration in the present system should be made in the Lower provinces, and it rests with the government to say what that change will be. The rules now submitted

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appear to Mr. D. C. Smyth to be well calculated for carrying out the proposed alteration in the law. Should objections be made to any of the details, Mr. Smyth feels satisfied that other rules may be framed, calculated to meet every difficulty; but it appears in every respect advisable that the consideration of these rules should be postponed until the general question of transferring the sales of lands to the judicial officers shall have been finally disposed of by government.

Proposed Rules.

Rule 1st. Every sale of landed property, whether malgoozaree or lakiraj, in execution of a decree of court, shall be conducted by the sudder ameen of the district in which the property to be sold is situated.

Rule 2d. The sudder ameen of each district shall be allowed an establishment of English writers and mohurrirs of the vernacular language of the district, to be fixed by the judge in the first instance, for the purpose of keeping up such books and statements as may be found requisite for the due performance of this duty. To meet the expense of this extra establishment, a deduction of one per cent. for the present (subject to such future increase or decrease as may be found necessary) shall be made from the proceeds of sale; an account of which shall be kept by the sudder ameen, and submitted monthly to the judges, and quarterly to the secretary to government in the judicial department.

Rule 3d. In cases of execution of decrees, the court, on receiving from the decree-holder a statement of the lands belonging to the party or parties answerable for the amount of the decree, proposed to be attached and sold, shall, if necessary, apply to the collector of the district within which the lands are situated, for the purpose of obtaining any information regarding such property as may be requisite to enable the court to prepare the sale papers; and the collector of land revenue shall thereupon furnish all such information as the records of his office may afford, with all practicable despatch.

Rule 4th. After the attachment of the landed property and the preparation of the sale papers, the court will forward a copy of the report of the officer who may have attached the property, and a copy of the sale papers, to the sudder ameen of the district in which the property may be situated, requesting him to proceed to the sale.

Rule 5th. The sudder ameen, on the receipt of this requisition, shall use the proclamations and notices of sale required by Clause 2, Section 3, Regulation VII. 1825; and shall proceed at the proper time to sell the property in his public cutchery, agreeably to the rules contained in Regulation XLV. 1793, and VII. 1825.

Rule 6th. All sales conducted under these Rules shall commence on the 1st day of every English month (unless the same may fall on a Sunday or on some authorized holiday when the courts are closed, in which cases the sales shall commence on the Monday following, or on the next public court day), and shall continue *de die in diem* until the whole shall have been disposed of.

Rule 7th. On the conclusion of a sale, made as above directed, the sudder ameen shall require the purchaser to pay down 5 per cent. on the amount purchased, as earnest money; and in failure thereof shall immediately proceed to a resale. The deposit having been paid, the remainder of the purchase-money shall be paid by 12 o'clock of the day following; and if not so paid, the deposit shall be forfeited to government, and a resale made forthwith, without any fresh proclamation or notice of sale being necessary. In all such cases the sale roobocaree shall record the circumstances in full.

Rule 8th. If any intending purchaser, after having been called upon as above, to make the deposit of 5 per cent. on the amount purchased, shall refuse or neglect to do so, it shall be competent to the sudder ameen to impose a fine on the delinquent not exceeding 100 rupees; commutable, if not paid, to imprisonment in the civil gaol for a period not exceeding 15 days.

Rule 9th. When a sale shall have been concluded and the purchase-money paid in full, the sudder ameen shall grant the purchaser a receipt for the same, and forthwith remit the amount (minus the actual authorized expenses incurred in bringing the property to sale and the per centage authorized in Rule 2d) to the treasury of the judge of the district to which he is himself subordinate. As soon after as may be practicable (being in no case beyond 10 days from the day of sale) the

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the sudder ameen shall draw out a statement of the sale in English, and also in the native language current in the district, agreeably to form A., and transmit the same to the judge or other officer under whose order the sale was made; who, after disposing of any objections which may have been urged against the sale, shall confirm or annul the same, as to him may seem right and proper, and communicate the result immediately to the sudder ameen.

Rule 10th. On receipt by the sudder ameen of the confirmation of any sale, he shall prepare a bill of sale, agreeably to form B., to be delivered to the purchaser.

Rule 11th. It is to be distinctly understood that the duty of the sudder ameen in conducting these sales is purely ministerial (except in cases in which the sale may have been ordered by himself, in execution of a decree passed in his court): that it will be his duty to see that the property is fairly sold under the provisions of the Regulations applicable to sales in satisfaction of judicial awards; and that he is not to investigate objections which may be urged against a coming sale; nor is he authorized even to postpone a sale, except under the special orders of the judge or of the officer who may have directed the sale to be made.

Rule 12th. It is further to be distinctly understood, that nothing contained in these Rules is to be construed or shall be construed to interfere in any way with the claim of government to arrears of revenue due for any period antecedent or subsequent to such sales; all such claims will remain unaffected by the sale, the same as though no such sale had taken place. Accordingly, no deductions whatever shall be made from the proceeds of sale, except such as are authorized by these Rules; the sale being in the light of a private transfer from A to B, with all its liabilities and responsibilities.

Rule 13th. Whenever a sale of land made under these Rules shall have been finally confirmed and possession given to the purchaser, then, if the transfer be of that nature as, under the Regulations, the collector is authorized to record in the registers of landed property kept in his office, the collector shall, on application being made to him by the purchaser, accompanied by the original bill of sale, make the necessary transfer in the public registers, in the manner prescribed by the Regulations.

Rule 14th. The sudder ameen shall be required to keep up such statements and books as may be found to be requisite and necessary.

Rule 15th. In the absence of the sudder ameen, the whole of these rules shall be applicable to the officiating sudder ameen; and in his absence, to the principal sudder ameen of the district.

(signed) *J. Hawkins*, Register.

(No. 275.)

From *E. Currie*, Esq. Secretary to the Sudder Board of Revenue, Fort William, to *F. J. Halliday*, Esq. Secretay to the Government of Bengal, Revenue Department.

Legis. Cons. 14 Feb. 1842. No. 7. Enclosure.

Sir,

Present: C. W. Smyth, esq.

The attention of the Board having been recently called, by the Sudder Dewanny Adawlut, to the delay which has occurred on the part of the revenue authorities at Chittagong, in effecting sales of landed property in satisfaction of decrees of court; and it being also within the knowledge of the Board, that the question of the respective powers of the judicial and revenue authorities, in regard to such sales, is at present under the consideration of the Right honourable the Governor, I am directed to submit the following observations for his Lordship's consideration.

2. In the particular cases which attracted the notice of the Sudder Dewanny Adawlut, a great portion of the delay is to be attributed to a want of method in the collector's office, and to the commissioner having considered it expedient to ascertain certain local details regarding the property directed to be sold, without observing that under the provisions of Clause 8, Section 3, Regulation VII. of 1825 (extended by clause 1, section 4, to sales made by collectors), no such information is required by the revenue authorities; but still the delay was also in some measure attributable to the system in force respecting sales of this description; and it is with reference to this subject that the Board now solicit his Lordship's attention.

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3. His Lordship is aware that there has been considerable difference of opinion, as to the extent to which the commissioners of revenue can legally interfere in the confirmation or otherwise of sales made under the orders of the civil courts. Some of the judicial authorities have held, that under the provisions of Regulation VII. of 1825, the revenue commissioner is restricted to directing the collector to select for sale such portion of the lands included in the statement transmitted by the civil court as it may appear most convenient to dispose of in satisfaction of the decree; and that he has nothing whatever to do either with the confirmation or reversal of the sale, which rest exclusively with the civil courts. On the other hand, the practice of the commissioners of revenue has, with very few exceptions, proceeded upon the principle, that if a judge calls upon the revenue authorities to effect a sale, it is the bounden duty of the commissioners to see that the sale is effected in conformity with the rules upon which its legality depends, and with which the revenue officers have better means of becoming thoroughly conversant than any other class of functionaries. They observed that, although it is universally allowed that there should be some kind of confirmation of a sale previous to the realization of the purchase-money, yet the law nowhere speaks of the confirmation of a sale by a judge: no doubt the judge may, under certain circumstances, reverse a sale upon summary inquiry; but Clause 1, section 5, of the Regulation above quoted (and which was enacted for the express purpose of clearing up doubts which had previously existed, as to whether a sale could be reversed except by the institution of a regular suit) obviously contemplates such irregularities only as may be brought to the notice of the court by petition, and makes no provision whatever for the occurrence of irregularities which either do not attract the attention of individuals imperfectly acquainted with the forms of revenue procedure, or, as affecting only the interests of government, are intentionally allowed to pass without notice. It has been contended, in short, that unless the superior revenue authorities have the power of revising the sale proceedings, there is no check whatever upon irregularities and errors which, although passed over in silence by the parties, might produce much confusion and possibly ultimate injury to government; and that there is a practical absurdity in maintaining that, when the revenue authorities are called upon to effect sales, they should not have the power of seeing that such sales are effected legally and properly, so far as their own department is concerned.

4. But wide as has been the difference of opinion upon this subject, the discussion has been confined hitherto to the interpretation of the existing law; and the result would seem to show either that the law is in itself indefinite and obscure, or that its provisions cannot with safety be reduced to practice. It is the wish of the Board to avoid entering upon this debateable ground; and instead of inquiring what is the correct construction of the Regulations as they stand, they would rather solicit his Lordship to consider what would be a good and sound law for the future.

5. It seems to the Board that the respective provinces of the judicial and revenue authorities, in regard to sales in satisfaction of decrees, are clearly marked out by the reason and common sense of the case. It has been determined that sales of a certain description of property shall be made through the agency of the revenue authorities. The functions of these authorities are purely executive. Neither collector nor commissioner has anything to do with the justice of the order directing the sale, nor possess any power to decide upon claims advanced by third parties to the property advertised for sale. These matters must be dealt with by the civil courts, and by them alone. It seems, however, equally clear that the revenue authorities ought to have the sole control over the actual sale proceedings; and that after a sale has been effected by the collector, the papers should be submitted to the commissioner, for the purpose of enabling him to ascertain whether the advertisements have been properly issued, the interests sold rightly described, and all necessary formalities of sale duly observed. To these points the commissioner should limit his attention; and upon being satisfied that the proceedings have been properly conducted so far as his department is concerned, he should notify the same to the civil court. If the commissioner should be of opinion that the sale has not been duly and properly made, he should reverse the sale and direct a resale; notifying the fact to the civil court, which should have no power of interfering in either case. On the other hand, the civil court should exercise the full power of reversing on summary inquiry, upon any question of right connected with the order directing the sale, questions which the revenue authorities would not be

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at liberty to enter upon; but it would be expedient to provide that this power of summary reversal should not be exercised, except upon application preferred within a certain limited period, and as the inquiries connected with every such claim are quite distinct from the proceedings of sale, the present prescribed period of one month from the date of sale might be preserved.

6. It seems to the Board so evident that there ought, if possible, to be no interference on the part of the civil courts with the peculiar functions of the revenue department, and *vice versâ*, that they do not consider it necessary to adduce any lengthened arguments in support of the position. They would, however, remark briefly that the civil courts have not within their reach efficient means of checking irregularities in the conduct of sales, nor can they be supposed to be as conversant with the forms of revenue procedure as the officers at the head of that department, and it would be by no means difficult to adduce cases in which the timely interference of the local commissioner, or of the Sudder Board, has alone prevented the consummation of illegal sales in satisfaction of decrees, and the consequent injury and confusion which would have ensued; for the grounds of interference are frequently so strictly of a fiscal nature as to preclude the probability that they should ever have been brought to the notice of the civil court. Two instances may be adduced as illustrative of this observation. Talooka Jaipore consisted of 12½ villages with a sudder jumma of *Rs.* 2,801. A decree was obtained against two out of several sharers in the estate, and the collector sold, not the rights and interests of the two sharers, but three villages, with a specific jumma of *Rs.* 2,027. 11. 8, without any previous butwarrah. There were other irregularities in this sale, but the one just mentioned is a striking instance of the mischief and confusion which might result if the superior revenue authorities were to exercise no control over the proceedings of their subordinate officers in regard to these sales. Again in 1838 upwards of 100 villages belonging to the estate of the late Baboo Byjnath Saho, of Patna, were illegally separated from each other and sold with specific jummas in satisfaction of decrees of court, a course of proceeding which, had it not been for the interference of the Sudder Board, would have been fraught with danger to the revenue of government at any future period when the purchasers or their heirs and representatives might have colluded together with fraudulent intentions.

7. The Board would also avail themselves of this opportunity to suggest the expediency of abolishing the existing form of practice, under which the civil court is constrained in every instance to apply to the revenue commissioner for his sanction to a sale, instead of issuing its precept direct to the collector. Much delay is necessarily occasioned by this circuitous mode of proceeding, which, now that the collectors are authorised to advertise estates in arrears to government without previous application to the commissioner, has not even the plea of uniformity to recommend it.

8. Should his Lordship be disposed to adopt the suggestion contained in the last paragraph, it will be necessary to modify Clause 2, Section 4, Regulation VII. of 1825, by substituting "collector" for "Board of Revenue", and to rescind clause 3 altogether. The Board transmit herewith the draft of an Act for the consideration and approval of the Right honourable the Governor.

I have, &c.
(signed) *E. Currie*,
Secretary.

Sudder Board of Revenue,
Fort William, 21 May 1841.

Preamble.

WHEREAS it is desirable to curtail the forms observed in selling the rights and interest of individuals in satisfaction of decrees, and to define with clearness the functions of the court and revenue authorities in such sales;

The following rules have been enacted to be in force from the date of their promulgation.

2. Such portions of Regulations XLV. 1793, XX. 1795, XXVI. 1803 and VII. 1825, as provide that the civil court shall apply to the Board of Revenue to direct the sale to be made, are hereby rescinded; henceforth the court will transmit the statement of lands required by clause 2, Section 14, Regulation VII. 1825, direct to the collector of revenue, and the collector shall in future be competent

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petent to advertise and to proceed to actual sale without any previous reference for sanction to the local commissioner of revenue.

3. In modification of Clause 1, Section 5, Regulation VII. 1825, it is hereby further enacted that,

When the collector has completed the sale, he shall transmit the sale papers to the commissioner of revenue, who, if he find any irregularity in the mode of publishing and conducting the sale, shall be competent to reverse the sale and to order a resale to be made. If no such irregularity be found, or after a resale legally conducted, the commissioner will certify the completion of the sale to the court which may have ordered the same, and the court shall then, and not until then, be competent to confirm the sale.

4. It is hereby declared, that all sales made under the authority of an order of a court of justice are of the nature of private transfers from one individual to another, and carry with them all their responsibilities, and do not in any manner whatsoever affect the rights or interests of the state.

(No. 15.)

Legis. Cons. 14 Feb. 1842. No. 8.

From Secretary to the Government of India to *J. C. C. Sutherland*, Esq.

Sir,

Legislative Dept. Leg. Cons. 29 Mar. 1841, Nos. 1 to 13 (in original). Letter from Sec. to Government of Bengal, No. 172, of 1 Feb. 1842, with enclosures.

I AM directed by the Right honourable the Governor-general in Council to transmit to you, for submission to the Law Commissioners, the accompanying papers noted on the margin, relating to the existing laws for the sale of landed property in execution of decrees of court, and to request that the Commissioners will submit a report on the subject, at their early convenience, for the consideration of the Supreme Government.

2. You are requested to return the original papers with your reply.

I have, &c.
(signed) *T. H. Maddock*,
Secretary to the Government of India.

Council Chamber,
14 February 1842.

Legis. Cons. 30 Sept. 1842. No. 7.

From the Indian Law Commission to the Honourable the President of the Council of India in Council.

WE have now the honour to report our opinion upon the existing law of the Bengal Presidency relating to the sale of landed property in execution of decrees of the civil courts, which subject was referred to us in Mr. Secretary Maddock's letter, No. 15, of the 14th February 1842.

2. The correspondence received with this reference embraces four questions :

First, The maximum quantity of lakheraj land which by the terms "small portions of land held exempt from the public assessment," employed in Clause 2, Section 2, Regulation VII. 1825, it was intended by that clause should be disposed of by the courts in execution of their decrees or other process, without application to the revenue authorities.

Second, The expediency of discontinuing the transmission of English translations of decrees to the commissioners of revenue, on occasion of making application to those officers for the sale of lands in satisfaction of such decrees.

Third, The ascertainment of the relative functions of the civil courts and the commissioners of revenue in regard to the confirmation or annulment of sales of land made by collectors of revenue in execution of decrees.

Fourth, The expediency of transferring from the revenue to the judicial authorities the duty of conducting sales of land in execution of decrees or other judicial process.

3. On the first point some of the revenue authorities in the Lower Provinces are of opinion, that under the clause specified the courts are authorised to sell any parcels of lakheraj land not exceeding 100 beegahs. The reason assigned for this opinion is, that the government having abandoned to the landholders the revenue assessable on all such parcels in case of the resumption of the lakheraj tenure, the intervention

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intervention of the revenue officers in the disposal of them by public sale is not necessary for the protection of the government interests.

The Allahabad Sudder Court have expressed their concurrence in this view of the intentions of the Legislature. The Calcutta Sudder Court, on the contrary, regard the terms as limited to portions not exceeding 10 beegahs. Both courts agree in recommending an explanatory Act for the settlement of the question.

4. It does not appear to us that the meaning of these terms can be discovered by reference to the resumption laws. The limit which the government has imposed upon its own right to the revenue of lakheraj lands, held under invalid grants in certain parts of the country, is not uniform. In Bengal, Behar, and Midnapore it embraces grants of 100 beegahs; in Benares, grants of 50 beegahs only; whilst in the Ceded and Conquered Provinces, including Cuttack, the government has not relinquished its right to a revenue from the smallest extent of land held lakheraj under an invalid tenure.

But the expressions in question are general, and the clause containing them is in force throughout all the provinces of the presidency.

5. The rule was intended to legalise a previous practice; and we find, on an examination of the documents on which the provisions of Regulation VII. 1825 were founded, that the parcels of lakheraj land sold by the courts without reference to the revenue officers are therein described as small parcels, of a few beegahs, or such as when situated in and about towns, afforded suitable spots for building. This result is confirmatory of the view taken by the Calcutta Sudder Court, and a declaratory Act in accordance with that view would, in our opinion, give a correct interpretation of the intention of the Legislature at the time.

6. On the second point there seems to be no difference of opinion; and it further appears to us that the transmission of the copy of the decree to the revenue officers now required by law, might likewise be dispensed with; and that a tabular statement, specifying the number of the suit, the names of the parties, the date and substance of the decree, the court by which it was passed, and the property proposed for sale, would convey to those officers all the information they would require.

This statement, as suggested by the Presidency Sudder Board of Revenue, might be sent direct to the collector, who should be empowered to proceed to actual sale without previous reference for the sanction of the local commissioner.

7. On the third point, viz. the relative functions of the civil courts and revenue authorities in respect of the confirmation and annulment of sales of land in satisfaction of decrees, a great diversity of opinion exists, which has in some instances produced very embarrassing results. Of the existing law different views have been taken by the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad at different times; and the opinions of the members of the Presidency Sudder Board of Revenue are not in unison on the subject.

8. The question generally relates to the construction of Regulations XLV. 1793, XX. 1795, Sections 15–27, Regulation XXVI. 1803, and Sections 4 and 5, Regulation VII. 1825; and the specific points of difference will be best understood by a statement of the several opinions, which are as follows:

First, That the duty of the collectors and commissioners of revenue consists solely in selecting the lands of the debtor for sale, and in making the sale; and that it rests with the courts to confirm or annul the sale when made; the power of confirmation being inferable from the power to cancel declared to reside in the courts by Clause 1, Section 5 of Regulation VII. 1825.

Second, That the courts have power to reverse, but not to confirm a sale; the latter formality resting with the commissioner, and being necessary to the validity of the sale, but not to be resorted to until it has been ascertained that no prohibitory order is expected from the court.

Third, That the courts possess no power of confirmation; and that no formal confirmation is necessary to the validity of the sale.

Fourth, That the revenue commissioners have power to control the proceedings of the collectors in the conduct of these sales, so far as to ensure regularity and conformity to prescribed rules; but that this power in nowise affects the acknowledged authority of the courts to cancel the sale. Such is stated to be the principle on which the commissioners of revenue act in the Western Provinces according to circular orders of the Allahabad Board.

Fifth, That the confirmation of the revenue commissioner is necessary to the validity of the sale; and that his revision, and if requisite, reversal of the sale, should be confined to the enforcement of the prescribed legal formalities, and the

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protection of the rights of government, and that the power of the courts to reverse the sale is meant to apply to circumstances independent of the mere conduct of the sales, and affecting the rights of interested parties.

In confirmation of this view it is urged, that it is supported by the practice of the revenue authorities in the Lower Provinces from 1793 to the present time; and that the conduct of these sales being committed to them, they must necessarily be held answerable for the duty being properly performed. And to exemplify the necessity of this controlling power for the protection of the interests of government, two instances are adduced, in which specific lands were separated from the estates to which they belonged, and sold by the collectors with specific jummas arbitrarily fixed, without any previous inquiry into their real assets, on which alone the allotment of the jumma could be made in the manner prescribed by law. Such irregularities, it is observed, were not likely to come to the knowledge of the courts, nor, if made known, was it the duty of the courts to rectify them.

9. We think that a comparison of the laws which have been passed from time to time up to the late Act of 1841, for the conduct of sales of lands for arrears of revenue, and in satisfaction of decrees, will throw light on this question, and perhaps lead to a satisfactory solution of it.

Sec. 3, Reg. VII. 1830.

10. From 1793 to 1830 no sales could take place for realizing arrears of revenue until the sanction of the superior revenue authorities had been received to the arrangement of the lots as prepared by the collector; in the last-mentioned year the necessity of this prior sanction was removed. There is no provision in any of the Regulations from 1793 to 1822 for the transmission of the account sales for the confirmation of the Board or commissioners of revenue after the sale had taken place, but the Board of revenue was by law expressly made responsible for the careful execution of the duty of conducting sales of land for arrears of revenue, and we believe it ever was the invariable practice to transmit such accounts, and to consider no sale complete until the confirmation of the superior authorities had been received. In 1822 such confirmation was by positive law made necessary to the completion of the sale.

Sec. 30, Reg. VII. 1799.
Sec. 28, Reg. XXVI. 1803.

Sec. 24, Reg. XI. 1822.
Sec. 4, Reg. VII. 1830.

11. So also in the original Regulations for the sale of lands in execution of decrees, it was evidently the intention that the letting of the lands should receive the sanction of the revenue Board before the actual sale; the appointment of the jumma on the specific lands selected for sale, when not composing an entire estate, in one lot, being preliminary to the issue of the sale advertisements. Perhaps the practice was so far modified, after the enactment of Regulation VII. 1825, as that the collectors were authorised to select the lands and proceed to sale, without the previous sanction of the Board of revenue to the arrangement of the lots, as was afterwards the case in sales for balances of revenue. It appears to have been the general practice throughout all the provinces of this presidency, from 1763 to the present time, for the collectors after sale to transmit the account sales for the confirmation of the Board and commissioners of revenue. Indeed, the law which declared the responsibility of the Board of revenue for the regularity of public sales of land, is placed, in the Regulations for the Western Provinces, after the rules for sales both for arrears of revenue and in satisfaction of decrees, and may well be held to apply to both.

See Cl. 3, Sec. 4.

It is reasonable, on general grounds, that this controlling power should exist; it is absolutely necessary for the security of the public revenue, if, according to the strict letter of the law, the jumma be apportioned on lands detached for the purpose of the sale from an entire estate; more especially if, since the passing of Regulation VII. 1825, the duty of arranging the lots has been committed to the collectors.

Reg. XLV. 1793.
Reg. XX. 1795.
Sec. 15–27, Reg. XXVI. 1803.

In fact, in the contemplation of the law, it was formerly the Board, and is now the commissioners of revenue who conduct the sale, and not the collectors; and though the sales, when made in the zillahs, are made through the agency of the collectors, they cannot be said to be completed until the superior authorities, by confirmation, have made the collectors' acts their own. This is the view taken by two of the judges of the Allahabad Sudder Court.

Letter from the Allahabad to the Calcutta Sudder Dewanny Adawlut, 24 April 1840.

12. The difficulty appears to have arisen from the provisions of Section 5, Regulation VII. 1825, which declares the power of the civil courts summarily to set aside for irregularity a sale made by the revenue authorities in satisfaction of a decree; but we think that no inference can fairly be drawn from this rule, to the prejudice of the controlling power of the commissioners of revenue. The long-established practice of the revenue department must have been well known to the

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government at the time of the passing of this law; and as in cases of sales for arrears of revenue confirmed by the Board and commissioners, dissatisfied parties were at liberty to institute regular suits for the annulment of the sales, on the ground of irregularity, so also they might, under the general law, have recourse to a like remedy in cases of sales, in execution of decrees similarly confirmed. But probably instances had occurred of the civil courts summarily setting aside sales of the last-mentioned class, on account of irregularity in publishing and conducting them; of the legality of which proceeding, as no special law had invested them with such power, doubts might well be entertained. We say probably, for neither in the records of government, nor of the Presidency Sudder Dewanny Adawlut, where the Regulation was framed, can we find any notice of the particular circumstances which led to the insertion of this section. The intention of it appears to have been to furnish parties deeming themselves aggrieved by the mode in which the sale was conducted, a cheaper and speedier remedy than a regular suit, and to obviate the delay which would otherwise occur in the execution of the decree.

Secs. 10, 11, Reg. III. 1793. Sec. 7, 15, Reg. II. 1803.

13. If the present system of effecting sales of land in satisfaction of decrees is maintained, it might be proper to provide, that parties dissatisfied with the sale as irregular, should first prefer their objections to the commissioner of revenue, and in case he confirms the sale, and of their still being dissatisfied, that they shall be at liberty to petition the court within a month after such confirmation. But that no plea on the ground of irregularity shall be admitted by the court, unless it shall have been urged to the commissioner, or unless the failure to do so shall be satisfactorily accounted for.

14. The last and most important point to be considered is, the expediency of transferring from the revenue to the judicial authorities the duty of conducting sales of land in execution of decrees.

15. Before examining the reasons which have been urged for and against this measure, we shall review the past and present state of the law relating to sales of land, both for arrears of revenue accruing thereon, and for the realization of sums due on account of decrees of court, so far as they concern the question before us.

16. By the original regulations for the sale of lands for balances of revenue, the revenue authorities were required to select for sale such a portion of the estate of the defaulter as was sufficient to liquidate the arrear, and to allot to that portion a share of the fixed jumma of the entire estate, to be calculated according to certain established rules. This apportionment of the revenue on the detached lands was considered necessary for the ascertainment of their real value, and consequently for the full developement of the benefits expected to result from the permanent settlement of the public assessment. But whilst justice to the purchaser required this allotment of the public burthen, the security of the revenue equally demanded that it should be made under the immediate direction of the revenue officers of government.

Sec. 10, Reg. I. 1793.
Secs. 13. 24, Reg. XIV. 1793.
Sec. 30, Reg. VI. 1795.
Sec. 7, Reg. XXVII. 1795.
Cl. 6, Sec. 23, Reg. VII. 1799.
Sec. 37, Reg. XXV. 1803.
Preamble and Sec. 2, Reg. XXVI. 1803.
Cl. 1, Sec. 30, Reg. XXVII. 1803.
Sec. 27, Reg. IX. 1805.

17. Subsequently it was enacted, that if the lands to be disposed of consisted of distinct mehals, separately assessed for the public revenue, they should be sold in distinct lots according thereto; or though not separately assessed, if they were of considerable extent, and so situated that they could without much delay or difficulty be divided into distinct lots, they were to be so divided and sold accordingly. But an estate might be sold entire, on the written application of the proprietor; or if, from local circumstances, it might appear more for his advantage that the whole should be sold in one lot.

Reg. V. 1796, extended to Benares by Sec. 26, Reg. V. 1800.
Cl. 4, Sec. 2, Reg. XXVI. 1803.

18. It was found that the zemindars, taking advantage of the want of information in the public officers of the real assets of estates, encouraged instead of preventing the public sales of portions of their lands, for the purpose of repurchasing the same in fictitious names, at an under-rated assessment; or of reducing the assessment upon the residue of their estates by over-rating the proportion sold. To remedy this it was provided, that on the occurrence of an arrear, the estate or portion intended for sale should be taken under the immediate management of the collector, in the expectation that he might thus obtain sufficient data for the allotment of the assessment, preparatory to a sale at the end of the year. But this being found inefficacious, it was afterwards enacted, that where an attachment for arrears of revenue became necessary, the entire estate should be attached; and in case of the existing pecuniary penalties proving ineffectual to compel the proprietors,

Secs. 21, 28, Reg. VII. 1799.

Preamb. & Secs. 2, 3, 5, Reg. I. 1801. Cl. 2, Sec. 4, Reg. XXVI. 1803.

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prietors, or their farmers, to produce their accounts, the whole estate was to be immediately sold for the arrear.

Sec. 6, Reg. I. 1801. Sec. 2, Reg. XXVI. 1803.

19. It was also found that the operation of the rule requiring that such lands should be selected for sale as might appear likely to sell for the amount to be recovered by the sale, and no more, was prejudicial to the public interests in the subdivision of small estates, as well as to the proprietors of such estates, by parcelling them in lots so inconsiderable as to prevent a competition for the purchase of them. The revenue authorities were therefore empowered to sell the estates of defaulters entire, when the sudder jumma did not exceed 500 rupees, or when the surplus proceeds of the sale, after discharging the arrear, were likely to be inconsiderable. The provision for the public sale of estates of considerable extent, in distinct lots, was also declared not meant to require the division and distinct allotment of a pergunnah, turuf, or other established local division, which were to be preserved entire.

Sec. VII. Reg. I. 1801. Sec. 2, Reg. XXVI. 1803.

Sec. 11, Reg. I. 1801. Sec. 13, Reg. XXVI. 1803.

20. The rules for the sale of lands in satisfaction of arrears of revenue having been thus simplified, it was thought that it could seldom, if ever, be necessary to sell a fractional portion of an estate, such as eight annas, four annas, or other proportion, to be held in joint partnership or common tenancy, without a previous division of the land, and distinct assessment of the revenue thereon; and as such sales were considered to depreciate the value of the property sold, from the uncertainty of the assessment, and the responsibility attached to the share of a joint undivided estate, it was enacted that no sale of that nature should take place without the express permission of government.

Cl. 2, Sec. 2, Cl. 1, Sec. 6, Reg. XI. 1822.

21. On the consolidation in 1822 of the laws relating to the sale of lands in liquidation of revenue balances, a discretion appears to have been left with the collectors in the selection of the lands for sale; but in case of their proposing for sale lands forming a parcel or fractional part of an estate, they were to explain to the Board of Revenue the grounds on which they fixed the proportional assessment.

22. Before this period it had become a general practice throughout the Lower Provinces to sell fractional portions of estates, without a division of the land and apportionment of the jumma, except in cases of estates assessed at a jumma not exceeding 500 rupees, which were sold entire. The facility which this description of sale afforded of realizing arrears of revenue was its great recommendation, and it may be doubted whether after the passing of Regulation XI. 1822, it could be deemed a legal mode of proceeding. That Regulation, by which Section 11, Regulation I. 1801, and Section Regulation XXVI. 1803, were rescinded, apparently contemplates only sales of entire estates, or specified portions of estates with a definite jumma assessed thereon respectively. The practice was considered objectionable by the Presidency Sudder Board of Revenue, as creating interests in common tenancy, and as tending to depreciate the value of land by opening a door to indefinite subdivision of landed property; and they accordingly prohibited it. But, aware of the difficulty and delay attending the original process of severing from an estate a specific portion of land with a jumma specially assigned to it, they laid down the general rule, that every estate should be sold entire for any amount of balance due upon it, unless the collectors were in possession of accounts sufficiently accurate fully to satisfy them that they had the means of determining a proportionate adjustment of the jumma upon specific lands or mehals of known limits or divisions contained in entire estates, without incurring any risk of loss to government from the distinct assessment.

Sections 6 & 34.

Cir. Or. No. 89, 22 May 1827.

Act No. XII. of 1841.

23. Under the law recently enacted all estates are now sold entire, whatever the amount of revenue balance due.

24. The laws relating to the sale of malgoozaree lands in satisfaction of decrees, so far as they regarded the selection of the lands for sale and the adjustment of the government jumma thereon, were precisely similar to those originally regulating the sales of lands in liquidation of revenue arrears, and were based on the same principles; and the reasons why the duty of conducting sales on the former account was committed to the revenue authorities were: "Because they are in possession of the accounts and information necessary for the adjustment, and the superintending the details of attachment and sale would necessarily occupy much of the time of the courts, and often occasion a delay in the enforcement of the decree."

Pream. Reg. XLV. 1793. Pream. Reg. XX. 1795.

Reg. V. 1796. Sec. 7, Reg. I. 1801.

25. These laws, though for a time modified in partial accordance with the modifications of the rules for the sale of lands for arrears of revenue, have since

1822 stood as they originally existed, excepting that gardens and orchards are now sold immediately by the courts. In the application of them the same difficulties were encountered as opposed the sale of lands in liquidation of arrears of revenue when conducted in the same manner, and the evil, though unremedied by law, has been obviated in practice. The revenue authorities, when called on to sell malgoozaree lands in satisfaction of decrees, dispose of the whole or a part of the debtor's interest in the entire estate or in some specific portion of it, without any adjustment of the government jumma. We deem this practice to be at variance with the law, but we think that practical convenience requires that it should be legalized.

Sec. 25, Reg. XXVI. 1803. Sec. 2, Reg. XI. 1822.

26. We now proceed to state shortly the grounds on which the proposed transference of the duty of conducting sales of land in execution of decrees is recommended by the government of Bengal, and advocated or opposed by the Lieutenant-governor of the North-west Provinces, the courts of Sudder Dewanny Adawlut, and the Sudder Boards of Revenue.

27. In favour of the transference, it is urged:

First, That the reasons assigned in the preamble of the law which imposed this duty on the revenue authorities, viz. "That the Board of Revenue and collectors are in possession of the accounts and information necessary for the adjustment of the jumma," and that "the superintending the details of the attachment and sale of lands would necessarily occupy much of the time of the courts, and often occasion a delay in the enforcement of the decree," no longer apply, inasmuch as no sales of distinct portions of estates with adjusted shares of the jumma ever take place; and that delays in execution are experienced to a very serious extent under the present system.

Second, That the transfer will save the time and labour of the officers of both the judicial and revenue departments, any information required from the collectors' records for the purpose of arranging the lots being easily procurable from that officer.

Third, That being purely a ministerial duty, it will be better performed either by the judicial officers themselves, or by agents of their own appointment.

Fourth, That sales of land in execution of decrees being in their nature and consequences essentially different from those for arrears of revenue, the public could more readily distinguish between them if conducted in different departments.

28. The objections made to the proposed measures are:

First, That the change is unnecessary, as the delays experienced may be remedied by a stricter superintendence on the part of the superior revenue authorities.

Second, That as the lots cannot be prepared without repeated references to the collector's office for information, time would be lost, not gained, by the change.

Third, That the revenue officers are the fittest instruments for conducting these sales, more especially in the Western Provinces, where the experience acquired in investigating and defining the various interests connected with land during the progress of the settlements, has given them a peculiar aptness for it; whereas the civil courts are less able to detect irregularities, and particularly the inexperience of native judges would be productive of great errors and abuses.

Fourth, That the proposed plan would throw difficulties in the way of collectors realizing the government balances, if heavy, especially on miscellaneous accounts, and when the government demand upon the land arose out of security bonds, or similar obligations.

Fifth, That having two distinct public offices for the sale of lands would create confusion and conflict of authority, as one estate might be exposed to sale on different accounts in different places on the same day.

29. The Regulations which imposed on the revenue authorities the duty of conducting sales of land in execution of decrees, in terms appear to apply only to estates paying revenue immediately to government, and to lands held exempt from the payment of revenue. As respects the former, all past experience proves the impracticability of selecting particular parts of estates for the purpose of such sales, and assigning to those parts specific portions of the government jumma; and consequently the expediency of employing the agency of the revenue officers for effecting these sales can no longer be made to rest on the original grounds. And as respects the latter, some of those officers who advocate the continuance of the present system as far as malgoozaree estates are concerned, see no objection to the proposed change in regard to lakheraj lands, in which the government have no immediate interest.

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30. It appears from the papers before us, that on the sale of the interest of one or more sharers in a joint undivided estate in execution of decrees, the collectors have been in the habit of applying the proceeds to the liquidation of arrears of revenue due from the whole body of proprietors. This mode of proceeding is animadverted upon in the letter from the secretary to the government of Bengal to the Sudder Board of Revenue, dated the 13th June 1837, as inequitable, both to the debtor and creditor, and the Board have by a recent circular prohibited generally the deducting from the sale price any arrears of revenue due from a mehal sold in execution of a decree. In that circular the Board observe, that "as such sales are declared to convey only 'the rights and interests of the individuals answerable for the amount of the decree in execution of which the sale is made,' they should be treated, so far as government is concerned, as mere private transfers; and that it is alike unnecessary and inexpedient to deduct from the sale price any arrears of revenue due from the mehal in which the rights and interests of any person or persons may be brought to sale. Such a course is obviously unfair and inequitable when the party against whom the process is enforced possesses only a limited share in a joint undivided estate; and it is in all cases objectionable, as tending to confuse two very different processes, and to infringe the great principle of the hypothecation of the land itself for the revenue assessed upon it." At the same time they instruct the collectors "to be careful in causing it to be distinctly understood, in every case of sale held in satisfaction of a decree of court or other similar claim, that it is a condition of the sale that the purchaser succeeds to all the liabilities of the former proprietor, and that the government claims against the mehal are in no degree affected by the sale."

Dated 20 Sept. 1841.

Letter to Secretary Lieut.-Governor N. W. P. 6 Oct. 1840.

31. On this subject the Allahabad Sudder Board make the following remarks:

"In these provinces the sale of lands in execution of decrees has now been for some time entirely separated from the sale of lands for arrears of revenue, and the collectors have been prohibited from levying arrears of revenue from the proceeds of sales by order of court. The only exception to the above rule was in case of the sale of an entire mehal, the sole property of the defendant in the suit. But the Board are satisfied that no inconvenience will arise from that case also being included in the general rule, because of course when purchasers are aware that the mehal will continue responsible for any arrear of the revenue assessed upon it, notwithstanding the sale, they will decrease the amount they would otherwise bid, by the exact sum which they will have to pay on account of the arrear.

"It was for this reason alone that the Board allowed the exception to stand hitherto, because they saw the result was exactly the same either way, in the case of the sale of an entire mehal being the sole property of the defendant; for as a purchaser, knowing that he must pay the arrear in addition to the price, will deduct from the price which he would otherwise be willing to pay, the amount of the arrear, so a purchaser, knowing that the arrear could be deducted from the purchase-money, would offer the full value of the estate as his bid. It follows that the revenue of government can be in no respect imperilled or injured by the proposed measure."

32. There is a general concurrence of opinion, that sales of malgoozaree estates, or portions of them, in satisfaction of decrees, must be regarded in the light of mere private transfers, and therefore as in no respect affecting the paramount right of the government to hold the entire estate, in whosesoever hands it may be, responsible for the revenue assessed upon it. In this view of the case, which appears to us the correct one, any special references to the revenue officers from the judicial (in case the proposed change be adopted), for the purpose of securing the maintenance of this principle, would, we think, be quite unnecessary. In any law providing for the change of system, it would of course be proper to announce the principle in the most explicit terms.

33. The other cases in which the interests of government are concerned in the public sale of lands, malgoozaree or lakheraj, the property of individuals may be divided into two classes:

First, Those in which lands are pledged to the government on the part of sureties for farmers of estates, persons under engagements in the abkarry, stamp and other departments, and for officers in the revenue employ of government.

Second, In which the landed property of defaulting zemindars may become liable to sale for arrears of revenue due from other estates, the sale of which has proved insufficient to liquidate such arrears, or in which the lands of defaulting

sudder

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sudder farmers may become liable to sale for balances due under their engagements.

34. As a notification of all proposed sales in execution of decrees would of course be transmitted to the collector's office, that officer would have an opportunity of bringing before the court all claims on the part of the government in either of the above two classes of cases, and the courts would deal with them as law and equity required. The revenue officers being legally authorised to enforce their own demands by the sale of any property liable to sale in satisfaction of them, some embarrassment might occasionally arise from the mistakes of the officers of either department, or from the uncertainty of the law; but a remedy would be found for the former by application to the controlling authorities, and no time should be lost in making the law clear, if any obscurity rests upon it. The mere circumstance of public sales being conducted in this or that department, ought not to occasion any difficulty in disposing of the questions of priority of claims, and liabilities affecting particular lands.

35. But under the construction which the law has received, not only are malgoozaree estates and lakheraj lands sold through the officers of revenue in execution of decrees, but likewise dependent talooks, and all other land tenures which by the title-deeds or established usage are transferable by sale or otherwise, as well as certain descriptions of ryotty tenures; the only exceptions being houses, gardens, orchards, and small parcels of lakheraj land, which are sold immediately by the courts. And as in the case of malgoozaree estates, no private allotment of the government jumma can exonerate the entire estate from sale in satisfaction of any arrears of revenue accruing on it, so neither can any distribution of the jumma of a dependant talook, or other similar tenure unsanctioned by the zemindar, operate to relieve the whole talook from responsibility for the punctual discharge of the rent assessed upon it.

Nos. 349, 897 & 921, of the Book of Constructions.

36. It is evident that very serious inconvenience has arisen from the double agency employed in this branch of the judicial system. The delays in the revenue department have long been a subject of complaint, and are well exemplified in the following extracts from a letter from the register of the Presidency Sudder Dewanny Adawlut to the secretary to the government of Bengal, dated the 1st January 1841, submitting statements from two districts in the Lower Provinces, exhibiting irregularities which, "the court apprehend will be found to prevail, more or less, throughout the Bengal presidency. In the 24-Pergunnahs the references made from the judicial to the revenue authorities appear to have been generally pending for 18 months, and in the majority of cases the collector has furnished no report whatever. In one instance, a reference made by the sudder ameen in March 1831 remained altogether unanswered. Two other instances of references made in 1836 and 1837 are to be found, in which cases no sale of the property has hitherto been effected.

Paras. 4 to 10.

"The return from the 24-Pergunnahs, however, may be pronounced to be highly satisfactory when compared with the state of things in the district of Tipperah. The first case on the Tipperah statement appears to have been referred to the collector in December 1836. In May 1840 the collector states that the lands were sold by him on the 9th April 1840, or after three years and a half; but up to the date of the return, 30th June 1840, the account sale had not been confirmed by the commissioner. The second case on the statement is one of a similar nature.

"The next case on the list that will particularly attract the notice of his Lordship is the fifth. In this the reference was made to the collector in June 1837, but up to June 1840 no report whatever had been furnished. In cases 6 and 7 five proceedings appear to have been sent to the collector from the court, calling his attention to the subject, but no notice whatever had been taken of the references.

"In the 10th case the reference was made in July 1835, more than five years ago; the collector reports that the lands have been sold on account of arrears due to government, and that the officers of the collectorate have been called on to state the right of the defendant to a share in the surplus of the sale; the judge considers the reasons assigned by the collector to be satisfactory, the court consider them to be quite the reverse. Here is a decree holder entitled to a certain sum of money in 1835, and who, owing to the vexatious delays of the officer, has been kept out of his money for nearly five years.

"In cases Nos. 11 and 12, six proceedings appear to have been sent to the collector without effect, or even notice; in cases Nos. 21 and 22, the references have

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have been pending before the revenue authorities for eight years; in many other instances the references appear to have been pending for two, three, four and five years. In case No. 28, which had been pending before the collector for five years, that officer states, apparently under the idea that he is only performing his duty, that 'orders have been passed to ascertain whether there are any objections to forward the proceeds of sale to the civil court,' forgetting entirely that the sale had been made under the express orders of the court, and that it was the court and not the collector that had to decide on these objections."

"In case No. 37, which was referred to the collector nearly four years ago, that officer appears lately to have requested the court to ascertain 'who was the real possessor of the estate;' and in case No. 30, no less than 11 proceedings appear to have been sent to the collector without success, the case having been referred to the revenue authorities about two years ago. In many other instances, two, three, and four calls appear to have been made on the collector without any effect whatever."

"It is unnecessary for the court to bring other instances to the particular notice of the Right honourable the Governor, as they must have already satisfied his Lordship that the present system, as existing in the 24-Pergunnahs and in Tipperah, is discreditable both to the judicial and to the revenue mofussil authorities; to the judicial officers in not having reported to this court the delay that had occurred in carrying the orders of their courts into effect, and to the revenue in the neglect of duty on their parts that these statements have brought to light."

37. From the remarks of the Allahabad Sudder Board of Revenue, we conclude that similar delays are experienced in the Western Provinces. In their letter above quoted, they say, "It will, the Board remark, save much time and trouble, both to the collectors and the courts, to adopt the mode now proposed, the sale of lands in execution of decrees being for some reason always an unwelcome duty to the collectors, and one in the performance of which they require much pressing."

38. If public sales of malgoozaree estates in execution of decrees, are regarded strictly in the nature of private transfers, no danger, as before observed, can arise to the interests of government from the proposed change. It would always be necessary for the court or officer conducting the sale to obtain from the collector's office, either immediately or through the creditor, a copy of the register of the mehal, specifying the names and shares of the proprietors, and the amount of jumma, and a statement of any balance of revenue due to government, for all purposes preparatory to the sale, and for the information of bidders at the sale. After sale the purchaser should be left to make his own application to the revenue authorities for the insertion of his name in the register of mutations, and for the separation of his share from the estate, if he desired it.

The same mode of proceeding, as far as applicable, would also be observed in the sale of lakheraj lands.

39. The duty of conducting sales of subordinate land tenures would not be new to the zillah courts in the Lower Provinces. From 1793 to 1832, and 1835, dependant talooks and other like tenures could be sold only through the zillah courts in satisfaction of arrears of rent accruing on them, but since the latter dates these sales have been transferred to the revenue department. We are not aware that this change was occasioned by any irregularities in the mode of making the sales whilst the duty remained with the judicial officers.

Sec. 16, Reg. VII. 1832.
Act No. VIII. of 1835.

40. Regarding the injurious effects which the proposed transference, if unaccompanied by strict regulations, might have on the landed interest in the Western Provinces, we extract the following passages from the letter of the Allahabad Sudder Board already cited:

"The only hesitation which the Board feel on the subject regards neither the principle of the proposed measure, nor any fear of its effect on the revenue, but its effect on the landed interest.

"The Board, from their opportunities of observation, cannot but fear that unless very strict rules of procedure be laid down, and some means of superintendence beyond what now exists, established to enforce attention to those rules, very great irregularities, and great peril of detriment, not to say ruin, to third parties, will arise from entrusting indiscriminately to all the native judicial officers the power of sale, if attended also with the power of making over the thing sold.

"The Board are of opinion that every facility should be given to the free sale of

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of landed property in these provinces, as the only remedy to the people for the pauperizing effect of the minute and constantly increasing subdivision resulting from the combined operation of their own laws and our early Regulations. The object of the Board's labours in the settlements has been to effect so complete a record of every man's possession, that there might be no difficulty in effecting a sale, either by his own voluntary act, or by the interposition of the court to act for him. Provision has been made for keeping up this record, so that it shall be always available.

"The collector can always, therefore, tell the court what any individual holding separately actually has in possession, or what any two or more individuals holding jointly have in possession.

"If on the sale by a court of one of these interests, the court directed the collector to put the purchaser in possession of what was held by the person whose property is sold, this can always be done; and if the purchaser claim more, he may have his suit for the specific thing which he claims. If the defendant object, he may have his suit to reclaim anything to which he objects. But if it be left to the native judges to give possession, the Board's experience induces them to fear that there will continually be endeavours made to put the purchaser in possession of something more than the defendant actually held. The Board make this remark on the ground of having had continually before them instances in which the native judges have endeavoured to force the collectors to give possession, both in suits and sales, of what is held by third parties. Now there is nothing which so completely tends to break up an agricultural community as attempts of this kind. It nullifies all the records made with so much cost and pains, and makes all property uncertain, and the strictest rules should be laid down in this matter."

41. As it is enacted in Section 14, Regulation VII. 1822, that the rights of all tenants as ascertained and recorded by the revenue authorities in their settlement proceedings, shall be maintained by the courts until altered by a judgment passed in a regular suit, we think a general rule prohibiting the courts from selling summarily in execution of decrees any interest in land alleged to belong to the debtor in a village of which a detailed settlement has been made, and which is not entered in the record of such settlement, would sufficiently provide against the danger anticipated by the Allahabad Board of Revenue. But, not being informed of the nature of the measures which have been taken under the directions of the Board for keeping up these records, we are doubtful whether some exception ought not to be made, authorising the court to inquire summarily into the fact of an alleged transfer by the recorded proprietor to the debtor, though such transfer has not been entered on the record. The extract from the record which for the purpose of this rule the court must have before it, should be furnished by the decree-holder with his application for sale; and, as in cases of sales of malgoozaree estates, the purchaser of any subordinate tenure should be left to take his own measures under Clause 8, Section 15, Regulation VII. 1799, Sections 5 and 6, Regulation VIII. 1819, and any other rules, to procure the registration of his name in the proper office, and the apportionment of the rent on the land purchased by him.

42. What part of the judicial establishment should be employed in conducting these sales, the times, places, and conditions of sale, and similar matters, are details capable of easy arrangement, should the principle of the proposed measure be approved. After a full consideration of all the reasons advanced for and against it, we are of opinion that under the restrictions suggested, it may be adopted without risk of injury to the interests of any party, and with a fair prospect of materially improving this branch of the judicial administration.

43. We may add that in the presidency of Madras all real property is sold immediately by the courts in execution of decrees, excepting permanently assessed estates, or portions of them, situated chiefly in the Northern Sircars, which are sold through the collectors; and that in the Bombay presidency all such sales are conducted by the judicial authorities.

We submit this our report for the consideration of your Honour in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
1 September 1842.

No. 8.

Legis. Cons. 30 Sept. 1842. No. 8.

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department.

Sir,

The Law Commissioners having this day submitted to the Supreme Government the report on the execution of decrees, directed by Mr. Secretary Maddock's letter, dated 14th February 1842, I am directed, as required by that letter, to return the papers enclosed in Mr. Maddock's letter.

Leg. Cons. 29 Mar. 1841, Nos. 1 to 13, in original.

They are specified in the margin.

I have, &c.

(signed) *J. C. C. Sutherland*, Secretary.

Legis. Cons. 30 Sept. 1842. No. 9.

Fort William, Legislative Department, 30th September 1842.

The following draft of a proposed Act was read in Council for the first time on the 30th of September 1842.

ACT No. —— of 1842.

An Act for the better Execution of Decrees in the Territories subject to the Presidency of Fort William, in Bengal.

I. It is hereby enacted, that so much of Sections 10 and 11, Regulation I. 1793, Section 7, Regulation XXVII. 1795, Sections 37 and 38, Regulation XXV. 1803, and Sections 27 and 28, Regulation IX. 1805, as relate to the adjustment of the government jumma on lands exposed to public sale, in satisfaction of the decrees of the courts of civil judicature; Regulations XLV. 1793, and XX. 1795, Sections 15 to 26, inclusive, of Regulation XXVI. 1803; so much of Section 27 of the same Regulation as relates to sales of land in satisfaction of decrees; and Sections 4 and 5, Regulation VII. 1825, be repealed.

II. And it is hereby enacted, that attachments and sales of land, or of any interest in land in satisfaction of the decrees, or other process of the courts of civil judicature, shall hereafter be made by such courts, or under their immediate directions; and that the rules now in force for the attachment and sale of such real property as the courts of civil judicature were heretofore authorised to sell in satisfaction of decrees without application to the revenue authorities, shall apply to all attachments and sales made under the authority of this Act.

III. And it is hereby enacted, that all sales of land, or of any interest in land made under the authority of this Act, shall be deemed to be of the nature of private transfers.

IV. And it is hereby enacted, that the Courts of Sudder Dewanny Adawlut shall from time to time frame such rules as to them shall seem meet for the attachment and sale of property in satisfaction of decrees or other process of the courts of civil judicature, which rules shall, after they have been approved by the Governor-general of India in Council, have the same force as if they had been part of this Act, until revoked by the said Courts of Sudder Dewanny Adawlut, with the approbation of the said Governor-general of India in Council, or by the said Governor-general of India in Council.

V. And it is hereby enacted, that all applications which may have been made by the courts of civil judicature to the revenue authorities for the sale of land, or of any interest in land, in satisfaction of decrees, or other process of such courts, previously to the passing of this Act, shall be proceeded upon in the same manner as if this Act had not been passed.

VI. And it is hereby enacted, that the operation of this Act shall be confined to the territories subject to the presidency of Fort William in Bengal; and that no part of this Act shall affect the process of Her Majesty's Supreme Court of Judicature, or of the Court of Requests at Calcutta, or of the Recorder's Court in the Straits of Malacca.

Ordered,

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Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India, after the 30th day of November next.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

(No. 74.)

From Officiating Secretary to the Government of India to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Legis. Cons. 30 Sept. 1842. No. 10.

Sir,

WITH reference to your letter, No. 172, dated the 1st February last, I am directed by the Honourable the President in Council to transmit to you, for submission to the Honourable the Deputy-governor of Bengal the accompanying draft of a proposed Act for the better execution of decrees in the territories subject to the Presidency of Fort William in Bengal, for any observations his Honor may feel disposed to offer on its provisions, in communication with the Sudder Board and Court, with reference to their letters of 21st May 1841, and 21st January 1842, to your address, and received with your letter above alluded to, and which are herewith returned, copies having been kept for record.

Legislative Dept.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Council Chamber,
30 September 1842.

(No. 245.)

From Officiating Secretary to the Government of India to *R. N. C. Hamilton*, Esq. Secretary to the Government of North-west Provinces.

Legis. Cons. 30 Sept. 1842. No. 11.

Sir,

I AM directed by the Honourable the President in Council to transmit to you, for submission to the Honourable the Lieutenant-governor North-west Provinces the accompanying draft of a proposed Act for the better execution of decrees in the territories subject to the presidency of Fort William in Bengal, for any observations his Honor may feel disposed to offer on its provisions, in communication with the Sudder Court and Board at Allahabad.

Legislative Dept.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Fort William,
30 September 1842.

(No. 1157.)

From *Henry Ricketts*, Esq. Commissioner Sudder Board of 16th Division, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, Legislative Department, Fort William.

Legis. Cons. 2 Dec. 1842. No. 38.

Sir,

I HAVE the honour of referring to the draft of a proposed Act for the better execution of decrees.

Revenue Dept. Miscellaneous.

2. Provision does not appear to be made for informing the collector of transfers made under the Act, and the Court of Sudder Dewanny Adawlut being authorised to make rules for attachment and sale only, could not, under the Act, prescribe rules for these proceedings subsequent to sale. I beg, therefore, to suggest, that

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to section 3, these be added, "but it shall be incumbent on the civil court to give notice to the collector of the district, of all transfers of property made under this Act, in order to the enrolment of the names of purchasers in the books of the collectorship," or, "and that purchasers of the property sold shall apply to the collector of the district to have their names registered under the penalties prescribed by the Regulation for non-registration of private transfers."

I have, &c.

(signed) *Henry Ricketts*,
Commissioner of 16th Division and Sudder Board.

Commissioner's Office,
Chittagong Division, 18 Oct. 1842.

Legis. Cons. 2 Dec. 1842. No. 39.

From Officiating Secretary to the Government of India to Secretaries Governments of Bengal (No. 90) and North-west Provinces (No. 301).

Sir,

Legislative Dept.

I AM directed by the Honourable the President in Council to call attention to my letter, No. $\frac{74}{245}$, dated the 30th September last, and to state that the reconsideration of the draft proposed Act for the better execution of decrees in the territories subject to the presidency of Fort William in Bengal, is suspended pending a reply to that communication.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Fort William,
2 December 1842.

— No. 9. —

No. 9.
Training of Junior Civil Servants.

TRAINING OF JUNIOR CIVIL SERVANTS.

Jud. Cons.
8 April 1836.
No. 6.

NOTE by the Honourable *H. Shakespear*, Esq.

BEING desirous of bringing under the consideration of the Council the subject of the best mode of training and employing the junior civil servants in the revenue and judicial departments under the three presidencies, I beg to suggest that the several governments be requested to report the rules under which the junior servants are now employed, from the time of their leaving college, or entering on public duties, until promoted to the office of joint-magistrate or deputy-collector, and that they will be pleased to furnish copies or abstracts of any papers or proceedings which may have been recorded on this subject during the last five or six years.

18 April 1836. (signed) *H. Shakespear.*

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *R. D. Mangles*, Esq. Secretary to the Government of Bengal (No. 41), and the Chief Secretaries to the Governments of Fort St. George (No. 29) and Bombay, (No. 30).

Jud. Cons.
18 April 1836.
No. 7.

Sir,

I AM directed to request that you will submit to the Right honourable the Judicial Dep.
the wish of the Supreme Government to be favoured with a report of the rules under which the junior civil servants are now employed, from the time of their leaving college, or entering on public duties, until promoted to the office of joint-magistrate or deputy-collector*; and that you will, with the permission of his Lordship*, furnish to me copies of abstracts of any discussions or proceedings which have been recorded on the subject during the last five or six years.

*To Madras and Bombay write—*Sub-collector. Governor in Council.*

I have, &c.

Fort William, (signed) *W. H. Macnaghten,*
18 April 1836. Secretary to the Government of India.

(No. 789.)

From *R. D. Mangles*, Esq., Secretary to Government of Bengal, to *W. H. Macnaghten*, Esq. Secretary to Government of India, in the Judicial Department.

Jud. Cons.
13 Aug. 1838.
No. 1.

Sir,

I AM directed to acknowledge the receipt of your letter, dated the 18th ultimo, Judicial Dep.
and to inform you in reply, that the Right honourable the Governor of Bengal is not aware of the existence of any "Rules under which the junior civil servants are now employed, from the time of their leaving college, or entering upon public duties, until promoted to the office of joint-magistrate, or deputy-collector." The young officers who enter those branches of the public service which are subordinate to this department of the government, are invariably appointed assistants to one or other of the commissioners of revenue and circuit for employment, according to the discretion of these functionaries, in the districts composing their respective divisions.

2. No "discussions or proceedings" of the nature to which you refer "have been recorded on the subject" above alluded to in this department during the last five or six years; but at page 733, *et sequitur*, of the volume "I. Public," entitled "Minutes of Evidence taken before the Select Committee on the Affairs of the East India Company," &c. &c., ordered by the House of Commons to be printed on the 16th August 1832, will be found a discussion on the topics to which your letter relates, extending to a considerable length.

I have, &c.

Fort William, (signed) *R. D. Mangles,*
3 May 1836. Secretary to the Government of Bengal.

No. 9.
Training of Junior Civil Servants.

Minute by the Honourable *H. Shakespear*, Esq.

Jud. Cons. 13 Aug. 1838. No. 4. Employment of junior civil servants. *3 May 1836.

I regret to find from the answer* from the Secretary to the Bengal Government, in the judicial department, that no rules have been laid down for the employment of the junior civil servants on their first entering upon the public service. They are appointed assistants to the commissioners of revenue and circuit, to be employed, at the discretion of those officers, in any of the districts composing their respective divisions.

2d. Is it possible that no better means can be devised for training men to the judicial administration of the country than this?

3d. Is it possible that, under this course of tuition, they can acquire any knowledge whatever even of the forms of judicial proceeding, still less any acquaintance with the general grinciples of Hindoo and Mahomedan law, and the regulations under which they must, at no distant period, be called upon to administer justice to the people?

4th. Defective as the system unquestionably was, under which young men, almost immediately on their quitting college, were intrusted with the decision of civil suits, though small in amount, the present system, under which the judge will take his seat on the bench, utterly ignorant of the forms of pleading, of the rules of appeal, and of the constitution and powers of the courts below, which he is expected to control, is a hundred times worse.

5th. In the early stage of our administration, an assistant was directed to assis the register in procuring all acts of the courts to be executed, and in translating and transcribing papers, and in arranging and keeping the records of the courts.

6th. When promoted to the office of register, he was empowered to try and decide suits to the amount of 200 rupees, which amount of jurisdiction was afterwards increased to 500 rupees. If of sufficient experience and tried ability, he might have been promoted to the office of assistant-judge, or subsequently, when that office was abolished in 1814, he might have been specially empowered to decide suits equal in amount to those tried by the judge himself.

7th. If from this grade he was appointed to the office of revenue collector, he obtained thereby an insight into the details of revenue management, of great assistance to him in adjudicating upon the relative tenures of the landed proprietors and their tenantry; but he never could forget the instruction he had got during his judicial training, and he returned to that branch of the service (as was generally the case) better qualified than before for the high office of a judge.

8th. But how is it now? Literally in respect to the administration of civil justice, which I am particularly adverting to, he has no opportunity, as far as I can see, of acquiring the slightest information.

9th. After the animated discussion that took place amongst the very intelligent committee got together at Simla, in 1831, it might have been expected that some employment would have been chalked out and substituted to supply the judicial instruction, the supposed want of which (I am free to admit the actual want of which) in the first stages of their initiation into the mysteries of jurisprudence, had brought about the removal of the registers and the abolition of their office.

10th. Nothing of the kind was done. The Governor-general, in his minute of the 10th of November 1831, seems to have come to the conclusion that the whole was a matter of obedience and subordination to superior authority. In recommending the system of Sir Thomas Munro, "of uniting the appointment of collector and magistrate; of destroying the independence of each other of every officer employed in the same district; of making the collector's a great office, consisting of deputy-collectors and joint-magistrates, subordinate to one head and acting upon the same system." Lord William Bentinck entirely overlooked the fact that however well that system might work, as to the administration of the revenue and the police, it made no provision whatever for the employment of young men in the judicial branch; they were in fact immediately removed from it, and from that time to this they have been excluded from all means, excepting what their own desire of information may prompt them to seek, of obtaining even a practical knowledge, much less a sound knowledge of judicial business.

11th. Lord William Bentinck had certainly not formed a very elevated notion of what the acquirements of an Indian judge ought to be. At the conclusion of the paragraph (28th) of his minute, from which the above is an extract, he adds,

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"It is in a school of this kind that young men will be best trained; a profound knowledge of jurisprudence, or the high attainments that distinguish English lawyers and judges, are not to be looked for, nor, however desirable, are they indispensable; but what is necessary is, that those, both young and old, who have the decision of suits, whether for 10 or 1,000 rupees, and who are vested with the powers of fine, imprisonment, and corporal punishment, should have served their apprenticeship; should be conversant with the manners and business of the country; and that their opinions should be formed upon the practice and greater experience of their superiors in office. This plan is in the course of introduction," &c.

12. And it has been going on ever since. Yet I can hardly bring myself to believe that when Lord William introduced it he was fully aware that by abolishing the office of register, and placing the assistants under revenue and police officers, he was debarring them from all opportunity of acquiring that knowledge which is essential to their sustaining the character of a judge with honour and propriety. I must repeat the fact, that for the last four years, there have been no means afforded to him by which a young man in the civil service can officially learn anything of the forms of judicial procedure, or of the civil laws and regulations, until he takes his seat on the bench to sit as a judge of appeal upon the decisions of the native judges, who, from their greater experience, would be more likely to be better acquainted with the question at issue than himself.

13. I ask if this is a position in which the government ought to place its judicial officers. Is the government not bound by every principle of justice to the people, and regard for the character of its institutions, to leave no stone unturned to correct such a state of things as this, and to avert the reproach that must inevitably follow a persistence in it?

14. Premising therefore that I have no wish to see the office of register restored, which in fact became incompatible with the extensive powers with which it was necessary to invest the native judges, the question I wish to have considered is,

By what means can civil servants be best educated to fill the office of civil judge? And it is difficult to conceive a question of more vital importance to the good government of the country and to the character of the British rule.

15. I have already shown how little this feature in "the best mode of employing the junior civil servants" received attention from Lord William Bentinck: it may be truly said not to have engaged it at all; and it may therefore almost be considered a question still pending to be decided, after mature deliberation on the information then obtained, or which may be obtainable now.

16. In pursuance of this view, I shall make no apology for referring to the reports of the committee dated the 24th of May and 22d of June 1831, and I would particularly attract the attention of the council to the following extracts from the latter, which entirely convey my own sentiments on the particular point under review, in language which I should not improve by attempting to alter.

Para. 3d. "In all countries considerable time is occupied in learning the principles of any liberal profession before an attempt is made at reducing them to practice, and this long after the ordinary period of education has passed. We see no reason why the office of judge in this country, more arduous perhaps than in any other, should alone be exempted from preliminary probation. The liberality of the pay granted during the probatory interval cannot alter the nature of the case. We should have thought that the preparation of cases, the collating or abstracting of papers, the taking of evidence, and reporting on accounts, were appropriate occupations for a young civil servant, and that if these duties can really be better performed by writers and mohurrers receiving one-tenth of their pay, the advantages of superior education cannot be very conspicuous; neither do we think that it by any means follows that the superior cannot derive relief from the employment of his subordinate without a transfer of responsibility."

Para. 5th. "We fully admit that the judge who has to pass a decision cannot be relieved from the duty of research and investigation; but it is by no means evident to us that he might not derive most important aid from the employment of a junior civil servant in the conduct of ministerial duties. It does not follow that because this duty has been hitherto performed by the amlah, that it has been properly, impartially, and satisfactorily performed. Every thing is now done by ill-paid and irresponsible individuals, save only the actual decision or determination.

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We need not say how much the value of such decision or determination must depend on the fidelity of the preliminary proceedings.

Par. 6th. "We are of opinion that there is a great variety of duties in the Judicial Department in which the junior civil servants can be employed, independently of the decision of civil and criminal cases. We conceive that there are many ministerial duties, to aid in the performance of which their services would be most beneficial. The preparation of a case for decision is of itself a duty which would afford ample occupation to any junior servant attached to a civil court. It is a duty which, though of especial importance, requires only attention, integrity, and a competent knowledge of the native languages for its efficient performance. It is a duty, however, which is now of necessity left entirely to the amlah, and by the abuse of which there can be no doubt of their reaping a most abundant harvest, to the detriment of honest claimants and the general perversion of justice.

Para. 7th. "We see no objection to the junior servants being entrusted with the execution of decrees, or to their being employed in giving effect generally to all acts of the courts," &c.

17. It is quite incomprehensible to me how Lord William Bentinck, with these opinions before him from men so well qualified to take just and practical views of the subject as Mr. Pakenham and Mr. Macnaghten, could have allowed the judicial part of the employment of the junior servants to escape his notice.

18. I have a note by me on the subject, which I think must have been recorded in the month of February 1831 in the Sudder Court; and as it contains the opinions which I still entertain on this important question, I shall beg permission to insert a transcript from it in this place. It shows how exactly my ideas correspond with those of the gentlemen above mentioned.

"I would employ the junior servants as heretofore as assistants to the judge, magistrate, or collector, as circumstances might require, dividing them into two classes of senior and junior assistants; the former to be considered such after they shall have served three years from the time they may have been declared qualified for the public service.

"In the judicial branch the juniors to be employed in translating papers, revising statements, and in the performance of such other duties of ministerial nature as the judge might prescribe, and also in the trial of petty offences as at present, with the exception that they should be prohibited from inflicting corporal punishment under any circumstances.

"The senior assistants, in addition to the duties authorised to be performed by the junior, to be employed in preparing civil cases for the decision of the judge, and when deemed properly qualified, to be vested in the trial of criminal cases with the special powers specified in Regulation III. 1821. He might also be deputed into the interior to make local inquiries, or, with the sanction of government, to take charge of any portion of a district in case of the prevalence of crime or inefficiency of the police.

"The senior assistant of the zillah station, whether in the Judicial or Revenue Department, to have, *ex-officio*, the registry of deeds, and in cases of death, indisposition, or other casualty, to take charge temporarily of the office of judge or magistrate, or collector, as the vacancy might be, reporting the circumstance to the commissioner or provincial court of the division.

"I think the judges would derive essential service from their senior assistants in the preparation of suits, previously to their being brought forward for final adjudication, in the following manner:

"When a suit is filed in the judge's court, the judge would refer it to the assistant, with directions to superintend the issue of process for the attendance of the defendant, to see that the answer, replication, and rejoinder were regularly filed, and all other preliminary acts gone through, and then to return it to the judge.

"The prescribed pleadings being thus completed, the court, as required by Clause 3, Section 10, Regulation XXVI. 1814, would consider and record the points to be established by the parties, and return the case to the assistant, whose duty it would be to ascertain that the exhibits were filed and the evidence taken without unnecessary delay, in conformity to the judge's order. The assistant would then return the case to the judge, certifying its being prepared for hearing.

"I feel confident much time would be gained by this mode of procedure. At present much of the judge's attention is occupied in passing orders in interlocutory and

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and miscellaneous matters immaterial to the real merits of the issue. Nor would this be the least of the advantages which would result from this mode of employing the junior servants; they would not only become by it intimately acquainted with the forms of judicial proceedings, but they would learn the principles of evidence, and obtain a knowledge of the laws and regulations before they were called upon to administer them. Above all, they would learn habits of regular application and attention to business, which not one in ten will acquire if left to make their way as barristers in the Mofussil courts."

19. Since the above note was written, the practicability of employing an assistant in preparing a case for the trial of the judge, has had a practical illustration in the very great assistance which the judges of the Sudder have derived from that course of procedure under the management of Mr. D. C. Smyth.

20. The majority of the Simla committee are entirely mistaken in their assertion that "the judge has no trouble with a case until it is brought to an issue to require his orders or a judgment, when the papers must be read before him, and the parties heard." (p. 30.)

21. There is not a more troublesome and vexatious part of a judge's duty than the having to call over the file, and pass some petty order for causing the attendance of a party, or for accelerating the filing of a paper or the appearance of a witness. I speak within bounds when I say that one-third of the judge's time is occupied in looking after such and similar matters, which would be equally well managed by the assistant, who would be all the time informing himself of the forms of process and the regulations applicable to them.

22. Not to trouble the Board with further remarks at present, the substantive proposition which I would wish to suggest is, that the Sudder Dewanny Adawlut may be called upon to furnish rules for the employment of covenanted assistants in matters connected with the administration of civil justice. If rules can be framed such as to afford satisfactory grounds for believing that their introduction will be attended with benefit to the suitors, relief to the judge, and the means of instruction to the juniors, doubtless the Supreme Council will not hesitate to suggest their adoption by the local government, with a recommendation that the employment of assistants may be extended to the courts of civil justice, and not be restricted, as at present, to the offices of magistrate and collector.

23. It does not appear to me necessary to defer submitting these remarks until the receipt of the information called for from the presidencies of Fort St. George and Bombay.

(signed) *H. Shakespear.*

Calcutta, 19 May 1836.

(No. 476.)

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *W. H. Macnaghten*, Esq. Secretary to the Government of India.

Jud. Cons. 13 Aug. 1838. No. 2.

Sir,

Judicial Dep.

Para. 1. I am directed to acknowledge the receipt of your letter of the 18th April last, No. 30, and to transmit herewith, for the information of the Right honourable the Governor-general of India in Council, the accompanying copy of a letter addressed to the Board of Superintendence for the College, under date the 13th May 1825, containing the rules established at this presidency for the employment of the junior civil servants on quitting college, and to acquaint you that no discussions on the subject have taken place during the last six years.

2. I am further directed to inform you, that in consequence of a necessity which existed, in the year 1826, of rendering as many of the junior assistant collectors as possible available for the public service, a slight deviation from the rules now submitted was authorised, by which all assistant collectors without exception who had served one year and upwards in the provinces in that capacity were made eligible, at the pleasure of government, for general employment, but it was at the time declared that this latitude was only temporary and confined to the exigency which then existed.

I have, &c.

Fort St. George, 30 May 1836. (signed) *H. Chamier*,
Chief Secretary.

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No. 3.
Enclosure.

(No. 181.)

From *D. Hill*, Esq. Chief Secretary to the Government of Fort St. George, to the Board of Superintendence for the College.

Gentlemen,

Judicial Dep.

In consequence of instructions from the Honourable the Court of Directors, the following rules have been framed for the civil service of this presidency:

1st. Civil servants on quitting college shall be sent into the provinces, and employed for at least two years in the Revenue Department as assistant collectors.

2d. The time which a civil servant, while attached to the college, may, with the sanction of government, have resided in the provinces under the superintendence of a collector, for the prosecution of his studies, may, to the extent of one year, be reckoned as part of the prescribed period of two years.

3d. Should any peculiar case occur, in which the application of the foregoing rules would be attended with great and unquestionable injury either to the public or to the individual, such case will be specially provided for.

4th. As far as the state of the service will admit of it, government will select such persons as shall have acquired a practical knowledge of revenue in the provinces to be judges of the Sudder Adawlut, and of the provincial and zillah courts, chief secretary and secretary to government in the Judicial and Revenue Department, register to the Sudder Adawlut, and secretary to the Board of Revenue; and will select to fill vacancies in the Board of Revenue persons who have served as collectors in the provinces.

I have, &c.

Fort St. George, 13 May 1825. (signed) *D. Hill*, Chief Secretary.

(A true copy.)

(signed *H. Chamier*, Chief Secretary.

Jud. Cons.
13 August 1838.
No. 5.

Minute by Mr. Shakespear, on the employment of the junior civil servants.

Minute by the Honourable *A. Ross*, Esq., dated 10th August 1836.

Under the system of revenue administration introduced by Regulation I. of 1829, the junior civil servants of this presidency, when they first enter upon the public service, are appointed assistants to the commissioners of revenue, by whom they are placed under collectors possessing the powers of magistrates; and under these latter officers they get, or may get, a knowledge both of revenue business and of the administration of criminal justice. But as Mr. Shakespear truly observes, they have nothing to do in the administration of civil justice, and consequently they cannot acquire that practical knowledge of the business and proceedings of the civil courts which is requisite to qualify them for the office of a civil judge.

In a note recorded by Mr. Shakespear in the Sudder Dewanny Adawlut in 1831, and to which he has referred as containing the opinion he still entertains, he recommends that junior covenanted servants should be appointed assistants to the judges of the zillah and city courts, suggesting that they might be employed in translating papers, revising statements, performing such ministerial duties of the courts as the judges might commit to them, making local inquiries in the interior, registering deeds, and preparing suits for the decision of the judges.

I was also a judge of the Sudder Court in 1831, and objected to covenanted civil servants, however young, being employed to do what would afford them little or no useful instruction, and what can be better and more economically done by uncovenanted officers. I then thought, and still think, that the knowledge required for the discharge of the functions of a judge would not be attained by giving any length of time to such employments as the five first of those above specified; and in regard to the last, viz. the preparation of a suit for decision, I would now observe that it is an employment for which a junior assistant is not fit, and which, if he were fit, it would not be right to commit to him. It involves the tracing out and the examination of all the evidence which a suit affords: it is, in fact, the trial of a suit; and to ensure right decision, it is necessary that it should be conducted by the judge himself who is to decide. It is a very great objection to our present system of civil judicature, that it allows the judges to employ others to perform

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perform this importaht duty for them; and a rule or order which required them to entrust its performance to inexperienced young men just arrived in India, would aggravate this objection.

Mr. Shakespear proposes that the "Sudder Dewanny Adawlut may be called upon to furnish rules for the employment of covenanted assistants in matters connected with the administration of civil justice." I would rather propose to send Mr. Shakespear's Minute, with all the reports and opinions which have been submitted to government on the subject of it, to the Law Commissioners, to be considered by them when the constitution of the courts for administering civil justice shall come under their revision. It is not likely that rules framed by the Sudder Adawlut for giving employment to covenanted assistants in those courts, as they are now constituted, would be adapted to their constitution and forms of procedure, as established after they have undergone revision.

(signed) *A. Ross.*

(No. 92.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *C. Macsween*, Esq. Secretary to the Lieutenant-governor of the North West Provinces, Agra.

Jud. Cons. 31 October 1836. No. 18.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to acknowledge the receipt of your letter, No. 3482, dated the 30th ult., submitting abstracts of proceedings for the month of July last.

Judicial Dep.

2. In reply, I am desired to request that his Lordship in Council may be furnished with a copy of a letter and its enclosures from the officiating register of the Sudder Dewanny Adawlut, No. 3, of the abstract of civil proceedings for the month of July last.

3. With reference to the entry No. 14, of the same abstract, I am desired to request the attention of the Honourable the Lieutenant-governor to the remarks contained in my letter, dated the 3d instant, suggesting doubts as to the legality of dispensing with the services of the Hindoo law officers.

I have, &c.
(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

Fort William, 31 Oct. 1836.

(No. 3873.)

From *C. Macsween*, Esq. Secretary to the Lieutenant-governor, North West Provinces, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, Judicial Department, Fort William.

Jud. Cons. 13 August 1838. No. 6.

Sir,

I AM directed by the Honourable the Lieutenant-governor to acknowledge the receipt of your letter, No. 92, of the 31st ultimo, and to transmit to you, as requested, copies of the letter from the officiating register of the Sudder Dewanny Adawlut, dated 10th June last, and of its enclosure, entered as No. 3, of the abstract of the civil proceedings of July last.

Judicial Dep.

2. With reference to the subject noticed in the 3d paragraph of your letter, I am desired to refer you to my letter, No. 3872, of the 15th instant, in reply to yours of the 3d October.

I have, &c.
(signed) *C. Macsween,*
Secretary to the Lieutenant-governor,
North West Provinces.

Agra, 17 Nov. 1836.

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Jud. Cons. 13 August 1838. No. 7.

Enclosure.

Sudder D. Adawlut, N. W. Prov. Present: M. H. Turnbull, W. Ewer, A. J. Colvin, and W. Lambert, Esqrs. judges.

(No. 587.)

From *H. B. Harington*, Esq. Officiating Register Sudder Dewanny Adawlut, North West Provinces, to *C. Macsween*, Esq. Secretary to the Honourable the Lieutenant-governor, North West Provinces.

Sir,

In continuation of the court's annual civil reports for the past year, I am directed to request you will submit, for the consideration of the Honourable the Lieutenant-governor, the accompanying copy of a Minute recorded by Mr. Ewer, one of the judges of the court, on the subject of the abolition of the office of register.

The court concur generally in the sentiments expressed in Mr. Ewer's Minute: they apprehend that little doubt can be entertained that the abolition of the office in question, by doing away with the only school in which the junior servants of the Company had an opportunity of making themselves acquainted with the judicial regulations, and of acquiring an insight into the practical duties and powers of the civil courts before they were called upon to exercise the more extensive and responsible functions of a zillah or city judge, possessing under the system now in force original and appellate jurisdiction equal in extent to that which was vested in the late courts of appeal, must tend materially to impair the efficiency of the judicial establishment, which, as remarked by Mr. Ewer, on the occurrence of vacancies in that department, they must necessarily be filled up by men who have had little or no judicial experience, and who may then be called upon for the first time to preside in a court, whose decisions in a large proportion of the cases that come before it are final, and not open to appeal or revision by this court, or any other tribunal.

I have, &c.
(signed) *H. B. Harington*,
Officiating Register.

Allahabad, 1 July 1836.

Mr. *Ewer*'s Minute, dated the 10th June 1836.

I would strongly recommend the re-establishment of the office of register, or something of the same description. At present I know not whence the supply of experienced judicial officers of the higher rank is to come from, while at the same time the administration of justice is hourly acquiring more importance, both in the eyes of the government and of the public.

During the last year we have seen several instances of judges appearing in that character for the first time, without the slightest notion of the duties they were called on to perform in their own court, and altogether unable to control the proceedings of their inferiors. On one occasion, indeed, the Sudder have had the disagreeable duty of reporting an acting judge unfit for the office.

At present a judge cannot be absent on leave without a stop being put to the trial of civil suits in his court. At Mirzapoor the judge was absent for three months, and the court shut merely because there was nobody to officiate for him. The same has occurred at Mynpoory and at other stations for various periods; and a calculation might easily be made, showing the number of additional suits which would have been disposed of had there been a register to take charge, instead of an assistant or principal sudder ameen to conduct the current duties.

A strict control over the proceedings of the inferior courts is more called for since the passing of Act XI. 1836, but where we are to find men capable of exercising it, is another matter. The only remedy is providing education for future judges as we do for collectors, and the sooner it is applied the better.

(signed) *W. Ewer*, Judge.

(True copy.)
(signed) *H. B. Harington*, Officiating Register.

(True copies.)
(signed) *C. Macsween*,
Secretary to the Lieutenant-governor of the North West Provinces.

No. 9.

MINUTE by the Honourable *H. Shakespear*, Esq., dated 13 December 1836.

Jud. Cons. 13 August 1838. No. 8. Secretary to the Lieut.-governor, N. W. Provinces, 17 Nov. 1836. Want of training for the judicial office.

THE sentiments expressed by the Allahabad sudder judges on this very important subject are so much in accordance with the opinions which I submitted to the Board in a Minute, dated the 19th of May last, that I beg to suggest the consideration of them in connexion with that Minute.

(signed) *H. Shakespear*,

MINUTE by the Honourable *H. Shakespear*, Esq., dated 19 October 1837.

Jud. Cons. 13 August 1838. No. 9. Employment of junior civil servants in the judicial branch of the service.

IN my Minute, dated the 16th of May 1836, I was not so fortunate as to impress the Governor-general and my colleagues with my own view of the vast importance to the best interests of the country of some systematic plan being adopted for training up the junior members of the service for employment in the administration of civil justice.

It is a subject, however, which I feel bound by every consideration of public duty to press on the attention of the government, and I think this a fit opportunity for doing so, at a moment when we are about to be deprived for a length of time of personal communication with the Governor-general.

His Lordship will have many opportunities during his tour of satisfying himself of the present state of the judicial establishment, and I am much mistaken indeed if his Lordship does not find, that as the present incumbents are disposed of, there are few among their juniors who are competent to sit in judgment on the proceedings and decisions of the experienced native functionaries, whose acts they are expected to control; or at all events, that the number so qualified are rapidly diminishing under the present system.

(signed) *H. Shakespear.*

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India.

Jud. Cons. 13 August 1838. No. 10.

Sir,

I AM directed to transmit to you, for submission to the Honourable the President in Council, the accompanying copy of a Minute recorded by the Right honourable the Governor-general of India, containing the impressions entertained by his Lordship on the question of the judicial education of civil servants.

Judicial Dep.

2. The papers which gave rise to this Minute, and specified below, are enclosed herewith in original.

I have, &c.

Head Quarters, Camp Delhi,
19 February 1838.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India,
with the Governor-general.

Letter from the Secretary to the Government of Bengal, dated 3 May 1836.

Letter from the Chief Secretary to the Government of Fort St. George, dated 30 May 1836.

Minute by the Honourable H. Shakespear, Esq., dated 19 May 1836.

Minute of the Honourable A. Ross, Esq. of 10 August 1836.

Letter from the Secretary to the Lieutenant-governor, North West Provinces, dated 17 November 1836, with Enclosure.

Note by the Honourable H. Shakespear, Esq., dated 13 December 1836.

No. 9.
Training of Junior Civil Servants.

MINUTE by the Right honourable the Governor-general, dated 17 February 1838.

Jud. Cons. 13 August 1838. No. 11. Enclosure.

Judicial education of civil servants.

THE important subject of the best means of providing for our civil servants a suitable education for the office of civil judge, has at different periods been discussed, with much variety of opinion, and it was specially brought to the notice of the Council by Mr. Shakespear, in a Minute of the 19th May 1836 (on which observations were offered by Mr. Ross, in a Minute of August 10, 1836), and in a subsequent note of December 13, 1836, referring to a Minute by Mr. Ewer, judge of the Sudder Court in the Western Provinces, of June 10, and a letter addressed to the local government by that court collectively on July 1st of the same year. I have continued to give my attention to the opinions recorded in these papers as the opportunities of observation and experience have occurred to me, and I now proceed to state briefly the impressions which I entertain on the question.

Mr. Shakespear refers with general approbation to the letter of the Western Sudder Court, who are inclined strongly to the re-establishment of the office of register, or the adoption of some arrangement of a similar character, and who would think it neeessary "to give our officers a training to make them judges, as we do to make them collectors." I observe, however, that in his Minute of May 19, 1836, Mr. Shakespear states, that he has no wish to see the office of register restored, "as it in fact became incompatible with the extensive powers with which it was necessary to invest the native judges." Mr. Shakespear at the same time feels strongly that the present system affords no opportunity to our officers of acquiring information in respect to civil justice, to the forms of pleading, the rules of appeal, the constitution and powers of the inferior courts, and still less as to the general principles of Hindoo and Mahomedan law, and the civil Regulations. He refers to opinions recorded by Mr. Pakenham and Mr. Macnaghten in 1831, and strongly supports them, as to the propriety of employing our junior officers to some extent in different ministerial duties in the courts of the judges, of which the most important is the preparation of cases for decision, in the mode in which so much excellent assistance was rendered to the Sudder Court by Mr. D. C. Smyth. He proposes to call upon the Sudder Courts for a scheme of rules for the employment in this manner of the junior assistants. Mr. Ross, on the other hand, considers that the preparation of cases for decision, "which involves the tracing of evidence," is the most important part of a trial, which ought if possible to be always performed by the judge himself; that it is a great defect in our existing practice that such preparation is so greatly made over to subordinate ministerial officers, but that this defect would be in no measure remedied by entrusting the duty to inexperienced junior civil servants. He would refer the whole subject for the consideration of the Law Commission.

Para. 14.

I would first advert to the opinion of the Western Sudder Court, which is shared doubtless by others, that it is of advantage to bring up our judges in something of an exclusive and separate course of training.

I should, for myself, accede only with much qualification to the conclusion, that for the provision of well-qualified judicial officers to the Indian service a distinct course of education, or a distinct class of men, is either expedient or necessary. I have always been inclined to doubt whether for any profession or for any career the early training of young men in one particular course, and apart from others, is conducive to good; for it forms them into a caste; it limits within that caste general knowledge and general experience; it gives to each individual, however inferior in natural qualification, a claim to advancement within the course for which he has been instructed; and to this degree it limits the powers of those by whom selection for advancement is to be made. I know how fairly open the question is to argument upon both sides, but for one, I would rather for the naval, military, or Indian service select candidates who had acquired the standard of qualification from general education, than accept in succession all who might be presented to me on the ground that they had been educated in the naval or military colleges, or at Haileybury; but if this view be at all tenable in first selections, it may, as it seems to me to be, urged with much greater force, as applicable to a subdivision and close classification within the services in India. I must strongly doubt whether a judge in India can be pronounced as qualified for the duties imposed upon him who has not had considerable experience in revenue matters and in the general business of the country, and who has not been in that contact with the people, and in that familiarity with their prejudices, their habits,

habits, their attachments, their merits and their faults, which a connexion with their monied interests, an intimate knowledge of their landed tenures, and the frequent view of their differences, apart from the reserve and formality of a court of justice, seem best to promise. As it seems to me, the most accurate knowledge of regulations and of forms and precedents, and even the long apprenticeship of a court, would but imperfectly supply the want of this experience; on the other hand, it would appear to me that a high revenue officer cannot be pronounced to be fit for his duties who is not also well conversant with much of that knowledge which would seem to be essential to the judicial character; and I should not think with great respect of the zeal and of the abilities of any one who had successively filled appointments in the magistracy and the collectorship, and who had not at the same time become much imbued with technical and with legal learning. This acquirement, grafted upon an habitual control of establishments and an insight into the ways of men, would perhaps give a very satisfactory degree of qualification for a judge in this country; and though different men will in very different degrees so qualify themselves, and though their dispositions will, with much variety, more or less incline them to that class of their mixed duties which may bear a judicial or a revenue character, I have no fear but that while the feeling of the government on the propriety of seeking a knowledge of all classes of duties is thoroughly understood, and an active superintendence exercised over the exertions of the service, officers will be found well able to fill either department.

It is to be remembered on this subject, that much information upon judicial principles and procedure is necessarily acquired in the mere ordinary performance of the duties of a magistrate and collector. Our magistrates are, in fact, criminal judges, with considerable powers, and a collector has very frequently to conduct investigations in their nature wholly judicial. In either class of situations an officer must become familiar with rules of process and principles of evidence.

A collector has to conduct in the courts of justice numerous suits on behalf of government, which must afford him instruction in their pleadings and practice. A collector mixing with the people from his youth must also have an intimate knowledge of agricultural rights and tenures, with which so much of the litigation in our Indian courts is connected; and he cannot avoid forming at least a general acquaintance with both the Hindoo and Mahommedan laws of inheritance. It is fortunate, also, that an Indian judge is not required to master a voluminous and complicated body of statutes and precedents, and that the duty of judicial administration generally is here very simple; so that, without even the more extensive study which may fairly be expected from a number of intelligent and zealous servants, an Indian magistrate or collector would ascend the bench with much of very valuable preparation, and with comparatively little of difficulty to encounter.

While I am, upon these grounds, disposed to think that the existing practice is not open to all the strong objections which Mr. Shakespear feels to it, I am yet not insensible to the advantage of mixing, if it could be effected, some early and more direct practical acquaintance with the administration of civil justice with the other experience which is acquired by the junior civil servants. I am favourable to the employment of any leisure which can be spared from more pressing avocations, to the object of acting under the judges in the preparation of cases, in the mode which Mr. Shakespear has suggested; and I should readily concur in a requisition on the sudder courts to prepare rules under which such ministerial co-operation could best be afforded. I fear that few of the junior officers will be found at present to possess leisure for the purpose; and I would not withdraw them, by any compulsory directions on the subject, from those duties of revenue inquiry and settlement which are of paramount importance as being calculated to define the rights and possessions of the community with a certainty and clearness hitherto unknown, and to give invaluable facilities to all administration. But I doubt not that there will be found officers who, from their desire to accomplish themselves in all that may tend to their greater efficiency as public servants, and in pursuance of an expressed wish of the government, would make additional exertions in order to enable them to devote some portion of their time to this new description of duty. I should not object, therefore, to an instruction to the judges and junior officers, of and below the grade of joint magistrates and deputy collectors, encouraging the one class to seek and the other to render assistance in this

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form, so as not to occasion detriment to the proper functions of any. The same opportunity might be taken of making more generally known the value attached by the government to a systematic study, although not required in the immediate course of duty, of the laws and regulations which must be referred to in the decision of civil controversies.

That the actual amount of assistance thus afforded to the civil judges would, according to its degree, be useful to them, I do not doubt. The appointment of uncovenanted officers of a superior class to render exactly the same description of assistance, is an arrangement which has been strongly recommended to me by intelligent officers of the Judicial Department. The duty would appear to me to be rather a faithful and intelligent superintendence of the collection and record of evidence adduced by parties or their agents, than the searching out of evidence by the assistant so employed, for which Mr. Ross would consider him not qualified.

It will be quite proper, I would however add, whatever be the immediate determination of the government, that the subject, as connected with the permanent scheme of our Indian judicial establishments, should be referred for the deliberation of the Law Commissioners.

(signed) *Auckland.*

(A true copy.)

(signed) *W. H. Macnaghten,*
Secretary to the Government of India,
with the Governor-general.

Jud. Cons.
13 Aug. 1838.
No. 12.

MINUTE by the Honourable *W. W. Bird*, Esq., dated 27th July 1838.

THE opinions expressed by the late Mr. Shakespear, and by the judges of the Sudder Court in the Western Provinces, on the necessity of providing some means for the judicial education of the junior civil servants, are by no means confined to those gentlemen. There are many others who still continue to think, that since the abolition of the office of register to the zillah and city courts, no school exists in which a practical knowledge can be acquired by the younger servants of judicial duties, and that some exclusive and professional training is necessary before they can be properly qualified to preside in a court of justice.

I do not concur in these opinions. It is true that in the office of register, to which it not unfrequently happened that junior civil servants, just out of college, were appointed, without any experience whatever, and almost without the power either of understanding or making themselves understood, some knowledge of forms and of proceedings was gradually acquired; but it was attended with great inconvenience, arising from the youth, ignorance, and inexperience of the junior servants employed, and the undue influence of the native officers of the court, on whom they had to depend, in the discharge of their judicial functions, for guidance and instruction. By dint of deciding they become at last conversant with decisions; but knowledge so acquired is at the expense of the parties concerned, and to disseminate it by such a process is (to quote an observation of Mr. Courtney Smith), "as if surgeons were to be instructed in their art by dissecting living men."

It was, therefore, I think, wise to abolish the office of register, and to postpone calling upon the junior servants of government to preside in courts of civil justice until they became, from maturer age and experience, better qualified for the purpose. A knowledge of judicial forms and proceedings is not the only requisites for a judge; he should possess likewise an intimate acquaintance with the habits, manners, feelings, and prejudices of the people; an acquaintance which is not to be picked up within the walls of a kutcherry, where a judicial officer is compelled to sit from morning till night, surrounded by his amlah, whose interest it is to blind both him and the people as to the real character of each other, and keep them as far apart as possible.

In fact, it is only in the Revenue Department that any real intercourse with the people

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people can be carried on, and it is on that account that at the Madras presidency, as appears from the letter of the Chief Secretary to the Government of Fort St. George, dated the 30th of May 1836, the junior civil servants are required, on leaving college, to enter the Revenue Department as assistant collectors, under a promise that, as far as the state of the service will admit of it, the government will select such as shall have acquired a practical knowledge of revenue in the provinces to be judges of the zillah and provincial courts and of the Sudder Adawlut.

"This arrangement," says Sir Thomas Munro, "was adopted not merely to teach them revenue business, but because it enables them to see the natives in their best form, as industrious and intelligent husbandmen and manufacturers; to become acquainted with their habits, manners, and wants; to lose their prejudices against them; to become attached to, and feel a desire to befriend and protect them; and because this knowledge and feeling will adhere to such servants for ever, and be most useful to them and to the natives during the rest of their lives."

The truth of these remarks no one, I conclude, will venture to deny. Moreover, it is quite a mistake to suppose that a knowledge even of judicial proceedings and forms is not to be obtained in the offices of magistrate and collector. As justly observed in the Minute of the Right honourable the Governor-general, dated the 17th of February last, "Our magistrates are, in fact, criminal judges with considerable powers, and a collector has very frequently to conduct investigations in their nature wholly judicial; in either class of situations an officer must become familar with rules of process and principles of evidence." Hence it appears, that while the necessary qualifications for a civil judge cannot be satisfactorily acquired without going through the office of collector, the offices of collector and magistrate afford an excellent preparation for discharging the functions of civil judge.

If in the naval and military services of England it would, as stated by his Lordship, be preferable to select candidates who had acquired the standard of qualification from general education, rather than accept in succession all who had been educated in the naval and military colleges, such a principle of selection is still more applicable to the Indian service. The attempt to confine men to a particular line, and train them in the mode suggested, was once tried and found impracticable. Whenever there is a call for particular qualifications, the individual who possesses them must be selected, let him belong to what line he may. So long as the civil service continues an exclusive one, there is no other alternative; and it is a remarkable fact in illustration of this necessity, that since the introduction of the revenue system of 1829, the majority of the members appointed to the sudder Boards have been judicial men.

The more general, therefore, the knowledge and experience in different departments which a man acquires in his progress through the service, the greater will be his facilities for executing the duties which he may be required to perform, and the more valuable will be his services to government. It is of course desirable to afford the junior civil servants every facility for qualifying themselves in the Judicial as well as in the Revenue Department; and for this purpose the plan proposed by Mr. Cameron for the judicial education of native candidates for the office of moonsiff might perhaps be adopted. On being appointed assistants to the commissioners of revenue, to be employed at the discretion of those officers in any of the districts composing their respective divisions, they may, when not engaged in revenue or other duties of a pressing nature, attend as assessors at the cutcherry of the civil judge, in order to acquire not only a knowledge of forms and proceedings, but likewise a familiarity with the disposal of judicial questions, which on being eventually required to preside in a court of justice, cannot fail to be of the greatest advantage.

(signed) *W. W. Bird.*

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FORT WILLIAM, JUDICIAL DEPARTMENT, the 13th August 1838.

Jud. Cons. 13 August 1838. No. 13. Resolution.

READ the Minutes and correspondence noted on the margin,* on the subject of re-establishing the office of register, and of other propositions for securing an adequate knowledge of law and procedure in junior civil servants in this establishment.

Resolved, that with reference to the Minute of the Right honourable the Governor-general, dated the 19th February 1838, the following letter be written to the secretary with his Lordship, and that the question be referred to the Law Commission.

Ordered, that a copy of the foregoing Resolution, with the papers connected with it, be transferred to the Legislative Department, for the purpose of being communicated to the Indian Law Commission.

Jud. Cons. 13 August 1838. No. 14.

(No. 168.)

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general.

Sir,

Judicial Dept.

I AM directed by the Honourable the President in Council to communicate to you, for the information of the Right honourable the Governor-general, that the subject of his Lordship's Minute, dated the 19th February 1838, on the question of the judicial education of civil servants, which was forwarded by you to Mr. Mangles in your letter of the same date, has met with that attention from the Honourable the President in Council which the high importance of the question therein discussed is calculated to excite.

2. On the first point to be disposed of, viz. the expediency of re-establishing the office of register, the President in Council is of opinion that no sufficient reasons in support of that measure were adduced in the Minute of Mr. Ewer, one of the judges of the Sudder Court in the Western Provinces, of date June 10th, 1836, while sufficient objections against it are admitted in Mr. Shakespear's Minute of the 19th of May in the same year; and the present organization of the civil service, taken in connexion with the extensive powers now exercised by native judges, seems to preclude the practicability of restoring the office of register, were it even desirable to do so.

3. The question therefore to be decided is, by what means, since the office of register, in which young men were early in their career introduced into judicial practice, and had opportunities of becoming acquainted with the forms and procedure of courts of law, is not to be re-established, provision may be made for training up a portion at least of the juniors of the service in such a manner that, although their career is commenced in the discharge of duties pertaining to the Revenue Department, they may not be without opportunities of attaining considerable proficiency in knowledge of the laws, and the forms and practice of the courts. For, in the opinion of the President in Council, whatever arguments may be adduced in favour of a system under which a certain number of the gentlemen of the civil service should be set apart for the judicial branch of it, and should be confined exclusively to that branch, he concurs entirely in the sentiments expressed by

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* Copy of Note by the late Honourable H. Shakespear, Esq., dated 18th April 1836.
To Secretaries to Governments of Bengal, Fort St. George, and Bombay, dated 18th April 1836.
From Secretary to Government of Bengal, dated 3d May 1836.
From Chief Secretary to the Government of Fort St. George, dated 30th May 1836, with Enclosures.
From Secretary to the Lieutenant-governor, North West Provinces, dated 17th November 1836, with Enclosure.
Minute by the late Honourable H. Shakespear, Esq., dated 19th May 1836.
Minute by the Honourable A Ross, Esq., dated 10th August 1836.
Minute by the late Honourable H. Shakespear, Esq., dated 13th December 1836.
Minute by the late Honourable H. Shakespear, Esq., dated 19th October 1837.
Letter from Secretary to the Government of India with the Governor-general, dated 19th February 1838, with Enclosure.
Minute by the Honourable W. W. Bird, Esq., dated 27th July 1838.

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by the Governor-general, that such exclusiveness would, in India, tend to a greater evil than any advantage which it is likely to produce, because the officer confined to his court and to its forms and proceedings from the beginning of his career, can never have the opportunities, which the revenue officer enjoys, of personal intercourse with all classes of the people, nor those inducements to interest himself in their affairs, from which the revenue officer acquires a considerable knowledge of their characters for good as well as for evil; and while the most serious obstacle opposed to the success of our efforts for the good government of India consists in ignorance, on the part of European functionaries, of the language, habits of thought, feelings, and prejudices of the people entrusted to their rule, any scheme of confining a civil officer throughout his career to the courts of justice, where he lives apart from the people, can tend only to perpetuate, with respect to one class of functionaries, an evil more or less unavoidable, and inherent in the circumstances in which we are placed, and, in the opinion of his Honor in Council, is least of all calculated to convert the individual so situated into a wise, and intelligent, and beneficent judge.

4. Besides, when it is considered how very large a portion of our subjects belong to the agricultural class, or is connected by dealings with the people who cultivate the soil and pay the government revenue, and how much of the entire capital of the country, which must be the subject of litigation in the civil courts, is employed directly and indirectly in agriculture, or in advances of seed, grain, tuccavee, and for paying the government revenue, and that the revenue officer of all others has the best opportunities of becoming intimately acquainted with the nature of these and all other transactions of the various parties concerned in the multifarious operations of agriculture and revenue receipts and disbursements, it would seem that a familiarity with the revenue system is indispensable to fit a man for the efficient discharge of the greater portion of his duties as a judge. Nor is it to be overlooked that the revenue officer, even in the discharge of his proper duties, cannot fail to become apt in the adjudication of disputes of precisely the same nature as those which come by a different process under the cognizance of the courts. He has to investigate and to decide upon questions of partition of disputed boundaries, of contracts, and of accounts; he has to take and weigh evidence, to decide upon the validity of documents, and to interpret as well as to obey a considerable portion of the Regulations of the Bengal Code. With the opportunities which such duties afford him of exercising and improving his talents, and acquiring, with much experience, habits of regularity and application to business, and a fitting confidence in his own judgment, it would be hard to imagine that when length of service and the exigencies of the State call him from his duties in the Revenue Department to the discharge of functions purely judicial, he should be found altogether wanting in sufficient qualifications to undertake them. He may be ignorant of the forms of procedure of the court in which he is appointed to preside, and he may be too little acquainted with those Regulations which apply exclusively to the administration of law; but these desiderata are not attainments so difficult to be acquired that a man trained in habits of regularity and application would permit himself to labour long under a deficiency in such kinds of knowledge.

5. Under a system also which admits of the employment of civil officers successively in different departments, the government, with the knowledge which it possesses of the characters and qualifications of the members of the civil service, is enabled to select for the highest employments in each branch of the administration those individuals, out of the whole body of the service, who appear best adapted for the performance of the duties which they are appointed to discharge, an advantage which would be in a great measure lost by any separation of the members of the service into distinct classes.

6. Entertaining these sentiments, the Honourable the President in Council entirely concurs in opinion with the Governor-general, as expressed in his Lordship's Minute, that in India the exclusive employment of any portion of the civil service in judicial proceedings would be calculated to limit their opportunities of acquiring general knowledge of men and things, and in so far tend to contract their minds; whereas experience of the duties which each individual must, in his capacity of magistrate and then of collector, have for many years been trained to perform, will, out of a numerous body of zealous and intelligent servants, produce many who may ascend the bench as judges, "with much of very valuable preparation, and comparatively little difficulty to encounter."

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7. The President in Council is, however, averse to the exercise by the same officer, at the same time, of the duties of magistrate and collector, and would think it far preferable that such a system of gradation and promotion should be introduced as would enable government to employ civil officers, on their preferment from subordinate situations, first in the capacity of magistrates, from which grade they might afterwards rise to be collectors, and after serving in that capacity for a sufficient period of time, might be eligible to be promoted to the situation of judge.

8. His Honor doubts the practicability of the plan of employing young men under the rank of deputy collectors and joint magistrates in judicial duties, under the zillah and city judges, which is recommended by the Right honourable the Governor-general. He has directed that it shall be submitted to the Indian Law Commission, to be taken into consideration in connexion with the code of procedure, in the arrangement of which the Commissioners are at present engaged.

9. The President in Council has not, however, judged it expedient at the present moment to call upon the Sudder Court to draw out rules, as suggested by the Governor-general, under which the attendance of young civilians in the zillah courts, and their subordinate co-operation in judicial proceedings, might best be regulated, as the present rules of procedure, according to which the court could alone draw out any subsidiary rules with regard to the occasional employment of young civilians in judicial proceedings, are likely to be considerably modified and altered, and it would seem better that these subsidiary rules should be formed with reference to the new law of procedure, and that it will be sufficient that the subject should at once be referred to the consideration of the Law Commission, and the question has accordingly been referred to that body.

10. The papers connected with this subject have been sent to the Law Commission with a letter, a copy of which, with the papers already considered by the Governor-general, and a Minute since recorded by Mr. W. W. Bird on the subject, is herewith enclosed.

I have, &c.

Fort William,
13 August 1838.

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India.

Legis. Cons.
13 August 1838.
No. 16.

(No. 282.)

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India,
to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

Legislative Dept.

I AM directed to forward to you copies of the papers noted in the margin,* and to request the attention of the Law Commissioners to the subject to which they relate, in connexion with the system of judicial procedure, in the arrangement of which the Commissioners are at present engaged.

I have, &c.

Fort William,
13 August 1838.

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India.

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* Copy of Note by the late Honourable H. Shakespear, Esq., dated 18th April 1836.
To Secretary to Governments of Bengal, Fort St. George, and Bombay, dated 18th April 1836.
From Secretary to Government of Bengal, dated 3d May 1836.
From Chief Secretary to the Government of Fort St. George, dated 30th May 1836, with Enclosure.
From Secretary to the Lieutenant-governor, North West Provinces, dated 17th November 1836, with Enclosure.
Minute by the late Honourable H. Shakespear, Esq., dated 19th May 1836.
Minute by the Honourable A. Ross, Esq., dated 10th August 1836.
Minute by the late Honourable H. Shakespear, Esq., dated 13th December 1836.
Miuute by the late Honourable H. Shakespear, Esq., dated 19th October 1837.
Letter from the Secretary to the Government of India, with the Governor-general, dated 19th February 1838, with Enclosure.
Minute by the Honourable W. W. Bird, Esq., dated 27th July 1838.

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From *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India.

ud. Cons. 1 October 1838. No. 5.

Judicial.

Sir,

I AM directed by the Right honourable the Governor-general to acknowledge the receipt of your letter, No. 168, dated the 13th ultimo, communicating the sentiments of the Honourable the President in Council on the question of the judicial education of junior civil servants.

2. In reply, I am desired to acquaint you, for the information of the President in Council, that his Lordship approves, for the reasons stated in your communication now acknowledged, the reference which has been made on this important subject to the Law Commission.

I have &c.

Simla, 6 September 1838.

(signed) *W. H. Macnaghten*,
Secy to the Govt of India,
with the Governor-general.

(No. 1572 of 1838.)

From *J. P. Willoughby*, Esq. Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, Fort William.

Legis. Cons. 30 August 1838. No. 36.

Judicial Dept.

Sir,

I AM directed to transmit, for the purpose of being laid before the Honourable the President in Council, the accompanying extracts, para. 17, of a letter from the assistant register of the Sudder Dewanny and Sudder Fouzdarry Adawlut, dated the 12th of September last, and paragraphs 24 to 31 of a circuit report of the Judicial Commissioner for the Southern Mahratta country, on the completion of his tour.

2. The Honourable the Governor in Council is aware that the subject of training the young civil servants for the judicial office, referred to in the 17th paragraph of the assistant register's letter, and in the 24th to the 31st of the report, has excited much anxious consideration, and that much discussion has occurred regarding it in the Indian Law Commission. It will no doubt receive the full deliberation of that body, when it arrives at the point in framing the code of civil procedure.

3. As, therefore, anything that could be done by this government in respect to the Bombay presidency would be partial, I am desired to refer the matter for the consideration of the Supreme Government, leaving it to his Honor in Council to hand over the papers to the Indian Law Commissioners, or to take such other course in respect to them as may be deemed fit.

4. The Governor in Council, however, is of opinion that it would be unwise to break in upon a system which has been so recently established as that of making over the decision of all original suits, with certain exceptions, to the native judicial functionaries, and because it is a very great question if it would be just to train junior servants to the judicial office by giving the decision of questions of right and property to inexperienced hands.

5. In respect to assistant judges trying appeals, the Governor in Council thinks that this should only be allowed where the state of the business of a particular court requires it, and never when the assistant is not amply qualified for the duty; nor for the purpose of providing a school of instruction for assistants.

I have, &c.

Bombay Castle, 28 July 1838.

(signed) *J. P. Willoughby*,
Secretary to Government.

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Legis. Cons. 20 August 1838. No. 37.

EXTRACT of a Letter from the Assistant Register of the Sudder Adawlut, dated the 12th of September 1837.

Para. 17. The defect under the existing system in the means of obtaining a judicial education for the junior members of the administration by that excellent school, the trying of original suits, adverted to in the 24th to 31st paras., has, I am directed to observe, more than once incidentally presented itself to the attention of the judges. The subject involves topics of the highest importance in the judicial system, and amongst these there appears to the judges a difficulty somewhat hard to be reconciled, which arises from the distinction of authority in the European and native branches. If to the former are to be confined the high grade in judicature of appellate jurisdiction, it will, the judges conceive, be obvious that correspondent qualifications must be possessed by these functionaries; and amongst these the court would assign, at nearly the top of the list, a practical knowledge of the character, habits, and customs of the people, the attainment of which, however, appears to the judges to be hopeless, excepting by some such means as the schooling above adverted to. Upon the return of the absent judges, and when a full court can thereby be assembled, the subject will be brought on for consideration, with the able and judicious remarks Mr. Greenhill has offered, and the court will thereafter submit its sentiments to government.

EXTRACT of a Circuit Report from the Judicial Commissioner for the Southern Mahratta Country, dated 1st August 1837.

Office of assistant-judge not so useful as it ought to be. No judicial school for civilians.

Para. 24. This office is requisite in many respects, but owing to the present laws, is not nearly so useful as it ought to be. By the code, as promulgated by Mr. Elphinstone's government, a judge could refer small causes to his assistants; but this enactment was altered by subsequent governments, and no original suits can now be tried by an assistant judge, excepting a very small class, such as suits in which the native judges may be interested. He may, however, hear appeals. The singular position in which this class of public servants has been placed by the alterations in the code, calls for grave consideration; and although it has a long time back, and often, presented itself to myself and others as requiring the attention of the legislature, I have hitherto been deterred, by various causes, from alluding to it in an official manner.

25. The spirit of legislation has been of late to employ natives as judges, either for the sake of economy merely, or for their supposed efficiency, reserving to the European civil servants the much more difficult and important office of judging on appeals, executing decrees, and of controlling the native servants. These are delicate and difficult duties, requiring great practical knowledge of the detail of a court, and also an intimate acquaintance with the habits of the people, their usages, and rules of conduct. I shall not allude in this place to the knowledge of the rational rules of evidence, of procedure, and of jurisprudence generally requisite for a judge to possess; in short, I would say that something more is required of a judge of appeal and control than common sense, and a merely studied acquaintance with the Regulations, and that without it, a man of talent even, is not likely to fill the judgment seat, at first especially, with credit either to himself or the government.

26. The operation, however, of our present Regulations is fast bringing the judicial branch of the service to a condition which I cannot contemplate without anxiety. The juniors have no opportunities of learning; they are partially employed in criminal cases only (and these necessarily of too serious a nature to be entrusted to a young man on his first entrance on public employment), and probably have little or no opportunity of gaining an insight into the business of the civil courts, till they are at once raised to the bench, where they have to sit in final judgment on the decrees of judges of far greater practical knowledge and experience than themselves; and that such a state of things would lead to a loss of public confidence, and to contempt of the judicial administration, I think there is too much ground for apprehension.

27. The actual state of the judicial branch of the service seems to render an early and serious consideration of the subject of importance; and in venturing to suggest it, I would allude, with great deference, to a mode of remedying the existing defect, which would perhaps not be unsuccessful.

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28. By the present Regulations, all original causes are tried by native judges, the principal of whom resides at the sudder station, and who alone has unlimited jurisdiction. At large towns it is generally necessary to have a court of inferior jurisdiction, to relieve the principal sudder ameen. I would propose to invest the assistant judge with concurrent jurisdiction with the chief native judge, whatever might be his powers.

29. By this very simple arrangement several important ends would be gained; it would enable the judge to limit his assistant to such causes as he might consider him competent to investigate, with reference to his judgment, knowledge and experience. To a very young assistant he would refer the simplest cases; and those of a more difficult nature, to a more experienced servant only. It would give the public the advantage of two descriptions of courts, which I rather think would be very acceptable, and it would relieve the principal sudder ameen of the large towns, and in some cases would allow of the reduction of a junior ameen.

30. If it were left to the suitors to file their cases in either court, a competition for the confidence of the public would arise, and an index to the public opinion in regard to native and European judges, generally and comparatively with each other, would be obtained, whereby the sometimes questioned and important fact, that natives prefer the administration of justice of the European civil servants to all others, would be determined; but the difficulties of regulating such a system, so as to prevent some courts from being overwhelmed, appear to be considerable, and I am not prepared to say that it could be carried into a practice.

31. If such an alteration as alluded to in para. 28th of the present law were to be made, I am inclined to believe that the appellate jurisdiction now possessed by principal sudder ameens and assistant judges, should be abolished, as it must be advantageous to lessen the grades of appeal, so as to bring the final appellate court as near that of original jurisdiction as possible, and the first step of the ladder of appeal (of which there may be six) being the worst, can only promote litigation.

(True extract.)

(signed) *J. P. Willoughby,*
Secretary to Government.

(No. 295.)

Legis. Cons. 20 August 1838. No. 38.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

In continuation of my letter, No. 282, dated the 13th instant, I am directed by the Honourable the President in Council to forward to you the accompanying copies of letter, No. 1572, from the Secretary to the Government of Bombay, dated the 28th ultimo, and of its enclosure, and to request that you will lay the same before the Indian Law Commissioners. Legislative Dept.

I have, &c.

Fort William,
20 August 1842.

(signed) *T. H. Maddock,*
Officiating Secy to the Govt of India.

From the Indian Law Commissioners to the Right honourable Lord *Ellenborough*, Governor-general of India; dated 2d July 1842.

Judicial Cons. 4 Nov. 1842. No. 12.

My Lord,

We have now the honour to reply to your Lordship's letter of the 4th April last. Acknowledge his Lordship's letter of the 4th April 1842, respecting—

2. This communication embraces three topics:

1st. The legal training in India of the Honourable Company's civil servants destined for the judicial branch of the service; and the means of retaining in that branch such qualified persons as may once adopt it. 1st. The legal training and emoluments of the Company's covenanted judicial servants.

2d. The appointment of a chief judge to each sudder court.

2d. The expediency of appointing a chief judge, with superior emoluments, to each of the Company's sudder or highest courts of judicature.

3d. The conferring upon the sudder courts a certain extent of original jurisdiction.

3d. The expediency of conferring upon the superior courts of appeal a limited extent of original civil jurisdiction.

Before submitting their sentiments on these topics, furnish an historical account of the several judicial systems of Bengal, Madras, and Bombay.

3. We propose to submit our sentiments on these topics in the order in which we have noticed them; but we think it will conduce to a clearer understanding of the whole subject, if, before entering upon the consideration of the particular points, we place before your Lordship a concise historical account of the several judicial systems prevailing at the three presidencies of Bengal, Madras, and Bombay, exhibiting their original character, and tracing them through their various modifications to their present state.

This narrative occupies paragraphs 4 to 104 of this address.

Narrative of the judicial system of Bengal. System as consolidated in 1793.

4. On the consolidation of the judicial system of Bengal in 1793 the administration of civil justice was vested in zillah and city courts having unlimited original jurisdiction: provincial courts of appeal, and the Sudder Dewanny Adawlut, the Company's highest court of appeal, consisting of the Governor-general and members of Council.

Ditto.

5. The zillah and city judges were authorised to refer to their registers suits for property not exceeding 200 rupees in value, but their decrees were not valid until countersigned by the judges.

Ditto.

6. The only native courts which found a place in this system were those of certain functionaries styled referees (aumeens), arbitrators (salisan), and moonsiffs, who were empowered to try, either immediately or by reference from the zillah or city judge, suits for personal property not exceeding 50 rupees in value.

Alterations since rendered necessary by the increase of litigation.

7. These establishments were perhaps originally inadequate to the duties imposed upon them. However that may have been, it is certain that in process of time the increase of litigation consequent on the general improvement of the country and the growing confidence in the judicial tribunals, rendered alterations in the system necessary; and as these causes continued to operate, various methods were from time to time resorted to, to check the growing evil of overburthened judicatories.

Nature of the remedial measures adopted, as respected European agency.

8. These remedial measures, as they affected the European agency, consisted in removing the primary cognizance of the more valuable suits from the zillah and city to the superior courts; in augmenting the number of judges, and increasing the powers of single judges of those courts; extending the judicial functions of the registers; and appointing assistant judges to share the labours of the zillah and city judges.

And Native.

9. But the limited number of civil servants at the disposal of the government, and the heavy expense attending this description of agency, presented serious obstacles to a general resort to it, whilst a liberal policy pointed to a more extensive employment of the natives of the country as a means both of increasing the efficiency of the courts and of improving the moral condition of the people.

Changes in the Civil Branch of the system, from 1793 to the present time.

10. The various changes in the civil branch of the judicial system from 1793 up to the present time may be thus briefly stated.

1808. 1817.

11. Original suits, exceeding 5,000 rupees in value, were transferred from the zillah to the provincial courts, though subsequently those between 5,000 and 10,000 rupees were allowed to be instituted in the zillah or provincial court at the election of the plaintiffs.

1814.

Original suits, above 1,000 rupees, were also made transferable from the zillah to the provincial court, at the discretion of the Sudder Dewanny Adawlut, which court was further authorised to call up from the provincial courts any original suits of the value of 43,103 sicca rupees (the amount then limited for appeals to the King in Council), which they deemed could be more conveniently and expeditiously tried by themselves. This last-mentioned power, we understand, the court never exercised.

1810–1814. Ditto.

12. Each judge of a provincial court, sitting singly, was empowered to perform a considerable part of the functions of the whole court.

1833. Ditto.

13. In 1833 the provincial courts were abolished, and original suits, above 5,000 rupees, made cognizable in the zillah courts.

14. The

Changes in the Civil branch of the system from 1793 to the present time.

14. The rule which made the zillah judge's counter-signature essential to the validity of his register's decrees was repealed; the register's powers were extended to suits of 500 rupees, and might be specially extended to suits of 5,000 or 10,000 rupees. The appointment of additional registers was provided for; and the services of the registers of the provincial courts were made available for the trial of original suits. 1794. 1803. 1814–1817. 1814.

15. The office of register to the provincial courts was abolished in 1821, and that of register to the zillah courts in 1831–32. 1819. 1821. 1831.

16. The office of assistant judge was instituted in 1803 for the purpose of relieving the zillah judges of any portion of their work which circumstances prevented their performing themselves. It was abolished in 1814, but has since been revived with the designation of additional judge. Ditto. 1803. 1814. 1833.

17. Commissions to natives to act as referees and arbitrators were recalled, and the original jurisdiction of the moonsiffs was successively extended, first to suits for personal property to the amount of 64 rupees, provided the cause of action had arisen within one year (in 1817, extended to three years) before the institution of the suit; next to similar suits not exceeding 150 rupees; and lastly, to all descriptions of suits (except for lakhiraj lands) not exceeding 300 rupees in value, and subject only to the general rules of limitation for the institution of suits. At this point it now stands, but the moonsiffs have not jurisdiction over British subjects, European foreigners, or Americans, excepting in suits relating to arrears or exactions of rent. Ditto. 1814. 1821. 1831.

18. Sudder ameens were first appointed in 1803 for the trial, by reference from the zillah judge, of suits for real and personal property to the value of 100 rupees. 1803.

Their powers were afterwards enlarged to suits of 150 rupees, and in special cases of 500 and 1,000 rupees. This last amount had since 1831 become the general standard. 1814. 1821–1827. 1831.

19. Finally, in 1831, the office of principal sudder ameen was constituted for the trial, by reference from the zillah judge, of suits to the value of 5,000 rupees. Their jurisdiction now embraces causes of an unlimited amount; and the few original suits which remained to the zillah judges have thus been virtually transferred to the native functionaries. In a recent report on the subject of special appeals we have recommended that all suits cognizable by the principal sudder ameens, and sudder ameens, should be instituted immediately in the courts of those officers. 1831. 1837.

20. It is unnecessary to detail the various changes which the system of appeals underwent during the period under review. It may be stated generally, that previous to the year 1831 a regular appeal lay to the zillah judge from the decrees of all his subordinate courts, and a special appeal to the provincial court; and when such first appeals were tried by the register or sudder ameen, a special appeal lay to the zillah judge. From the zillah judge's decrees in original suits an appeal lay to the provincial court, and a special appeal to the Sudder Dewanny Adawlut. From the decrees of the provincial courts in original suits an appeal lay to the sudder. Ditto.

21. Under the present system the decrees of moonsiffs and sudder ameens are appealable to the zillah judge, whose decisions thereon are conclusive. But the sudder court may authorise the reference of any such appeals to the principal sudder ameen, from whose decisions thereon a special appeal lies to the zillah judge.*

From the principal sudder ameen's decrees in original suits not exceeding 5,000 rupees in amount, an appeal lies to the zillah judge, and a special appeal to the Sudder Dewanny Adawlut. From the decrees of the zillah judges in any original suits which for special reasons they may have retained on their own files, and from the

* In a Report, dated the 14th December 1841, on the subject of special appeals, we have recommended that from all first decisions in appeal from the decrees of moonsiffs and sudder ameens a special appeal should lie to the Sudder Dewanny Adawlut.

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the decrees of the principal sudder ameens in original suits exceeding 5,000 rupees, a regular appeal lies to the sudder court.

Present salaries of zillah judges and additional judges, principal sudder ameens, sudder ameens, and moonsiffs.

22. The salary of the zillah judges is 2,500 rupees per mensem, or 30,000 per annum, and that of an additional judge, rupees 2,166. 10. 8 per mensem, or 26,000 per annum. Principal sudder ameens of the first grade receive 600 rupees, those of the second grade 400 rupees per mensem. The sudder ameens have 250 rupees per mensem. Moonsiffs of the first grade receive 150 rupees, those of the second grade 100 rupees per mensem.

Statement of the civil business of the zillah and subordinate courts in the Lower Provinces for 1840.

23. The following statement shows the quantity of civil business depending before and disposed of by the zillah and subordinate courts in the Lower Provinces during the year 1840 :—

Number of Judges.	DESCRIPTION OF JUDGES.	Number of Suits depending on the 1st January 1840.	Number Admitted within the Year.	Re-admitted or received by transfer in the Year.	TOTAL.	Decreed on Trial.	Dismissed on Default.	Adjusted or withdrawn.	Transferred to other Courts.	Total disposed of.	Depending on 1st Jan. 1841.
	ORIGINAL SUITS:										
252	Moonsiffs - - - - -	37,788	91,563	7,953	137,304	57,179	16,318	15,541	6,665	95,703	41,601
27	Sudder Ameens - - -	2,204	- -	3,968	6,172	2,558	560	278	401	3,797	2,375
	ORIGINAL SUITS AND APPEALS:										
40	Principal Sudder Ameens - -	5,799	- -	10,659	16,458	8,157	1,236	278	1,207	10,878	5,580
26	Zillah Judges - - - -	3,219	17,578	8,299	29,096	3,768	295	103	20,760	24,926	4,170
4	Additional Judges - - -										
		49,010	109,141	30,879	189,030	71,662	18,409	16,200	29,033	135,304	53,726
	SUMMARY AND MISCELLANEOUS SUITS:										
	Moonsiffs and Sudder Ameens -	18,397	- -	- -	- -	- -	- -	- -	- -	35,726	20,217
	Principal Sudder Ameens - -	6,292	- -	- -	- -	- -	- -	- -	- -	11,891	6,497
	Zillah Judges and additional Judges - - - - -	3,247	- -	- -	- -	- -	- -	- -	- -	11,771	2,323
		27,936	- -	- -	- -	- -	- -	- -	- -	59,388	29,037

Changes in the Criminal Branch of the system, from 1793 to the present time.

24. The system of criminal judicature established in 1793 has, like that for the administration of civil justice, undergone extensive alterations.

25. Originally the zillah and city magistrates had judicial cognizance of petty offences only, which they were competent to punish with 15 days' imprisonment, or fine not exceeding 50 rupees, except in the cases of certain descriptions of landholders, when the fine might be increased to 200 rupees.

For petty thefts they could award corporal punishment or one month's imprisonment.*

All other trials were disposed of by the courts of circuit and the Nizamut Adawlut.

26. The first enlargement of the magistrate's power extended to sentences of imprisonment not exceeding six months, with corporal punishment in cases of theft, and in other cases with fine not exceeding 200 rupees, commutable, if not paid, to a further imprisonment not exceeding six months.

1818. Subsequently they were empowered to pass sentence of two years' imprisonment with corporal punishment on persons convicted before them of aggravated thefts, simple burglaries, or receiving stolen property; to which cases of conviction of two or more thefts were afterwards added; and lastly, they were empowered to sentence

1829.

1828.

to

* Corporal punishment was abolished in 1834, and the undermentioned additional periods of imprisonment substituted in sentences passed by—

The Nizamut Adawlut and session courts - - - - -	2 years.
Magistrates and joint magistrates - - - - - -	1 year.
Assistants, principal sudder ameens, and sudder ameens - -	1 month.

This change is to be attended to in the perusal of what follows.

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Changes in the Criminal Branch of the system, from 1793 to the present time.

to one year's imprisonment, and 200 rupees fine, commutable, if not paid, to a further imprisonment of one year, persons convicted of affrays unattended with certain circumstances of aggravation. By some recent Acts certain specific offences have also been made cognizable by the magistrates, to some of which punishments are affixed exceeding the usual jurisdiction of these officers.*

27. According to the original plan the zillah judges were likewise magistrates, but in 1810 the separation of the two offices was legalised, and at the same time the offices of assistant magistrate and joint magistrate were constituted, with the same judicial powers as belonged to the magistrate; but the former office has been discontinued. The offices of magistrate and joint magistrate are now held by collectors and deputy collectors, or the former are held as distinct appointments in the Lower Provinces.

28. To afford relief to the magistrates, they were authorised to refer for trial to their assistants such petty offences as were originally within their own judicial cognizance. 1797.

Subsequently the assistants were empowered to adjudge both fine and imprisonment, commuting the fine, if not paid, to an additional imprisonment of 15 days; and in cases of theft, both corporal punishment and imprisonment. 1807. Ditto.

And eventually the government were authorised to invest an assistant with special power to pass sentence of imprisonment not exceeding six months, with a fine of 200 rupees, commutable to a further imprisonment of six months; and in cases of theft to six months' imprisonment and corporal punishment. At the same time the magistrates were authorised to refer to the Hindoo and Mahomedan law officers and sudder ameens of the zillah courts, trials for offences not requiring a severer punishment than 15 days' imprisonment and a fine of 50 rupees, commutable, if not paid, to a further imprisonment of 15 days; and in cases of theft one month's imprisonment and corporal punishment. This rule was made applicable also to principal sudder ameens. Ditto. 1831.

29. The judges of the provincial courts were also judges of the courts of circuit. The jurisdiction of these courts was eventually extended; in ordinary cases, to sentences of imprisonment for seven years, with corporal punishment for certain descriptions of offences; in cases of robbery by open violence, unattended with certain circumstances of aggravation, and in aggravated cases of theft, burglary, and receiving stolen property, to 14 years' imprisonment with corporal punishment; in cases of wounding with intent to murder, to 14 years' imprisonment. Ditto.

These courts had also the power of imposing fines, fixing a specific period of imprisonment in default of payment.

30. To increase the efficiency of the courts of circuit for the despatch of current and appeal business, single judges of the court were invested with similar powers to those conferred upon them in their civil capacity. Ditto.

31. All trials in which the judge of circuit differed from his Mahomedan law officer regarding the guilt or innocence of a prisoner, and all trials in which the offence proved required a severer punishment than the circuit court was competent to award, were referred for the determination of the Nizamut Adawlut. Ditto.

32. In 1829 the courts of circuit were abolished and their duties were transferred to commissioners of circuit, who were likewise commissioners of revenue. But this plan was found to impose too onerous duties on the commissioners, and since 1832 the zillah judges, in the capacity of session judges, have, with few exceptions, discharged the functions of the former courts of circuit. Ditto 1829. 1832.

33. Formerly the course of appeal in criminal cases was from the assistants, principal sudder ameens, sudder ameens, and law officers, to the magistrate or joint magistrate, and from the orders of the latter officers to the courts of circuit or session, with a further appeal to the Nizamut Adawlut. Ditto.

34. The system of criminal appeals has been lately revised, and the following are the rules now in force: Act XXXI. of 1841.

From

* *See* the Post Office Act, No. XVII. of 1837, and the Act respecting the exportation of warlike stores, No. XVIII. of 1841.

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From the sentences and orders of assistants, principal sudder ameens, sudder ameens, and law officers, one appeal lies to the magistrate or joint magistrate.

Changes in the Criminal Branch of the system from 1793 to the present time.

From those of magistrates, and joint magistrates, and assistants vested with special powers (except in certain minor cases) one appeal lies to the session judge; and from sentences or orders passed in criminal trials by the session judges, one appeal lies to the Nizamut Adawlut.

The decisions of the appellate authorities on such appeals are final, except that a power is vested in the Nizamut Adawlut to call for the records of any criminal trials of any subordinate court, and pass orders thereon. But no superior court has power to enhance any punishment awarded, or to punish any person acquitted by the court below.

Present salaries of collectors and magistrates, magistrates, deputy collectors, and joint magistrates, assistants, and law officers.

35. The salary of a collector and magistrate in the North-western Provinces is, we believe, 2,250 rupees per mensem, or rupees 27,000 per annum; in the Lower Provinces, rupees 2,000 per mensem or 24,000 per annum.

That of a magistrate is rupees 1,125 per mensem, or 13,500 per annum.

Deputy collectors and joint magistrates of the first grade receive 1,000 rupees per mensem or 12,000 per annum; those of the second grade rupees 700 per mensem or 8,400 per annum.

Assistants to collectors and magistrates and to deputy collectors and joint magistrates receive rupees 400 per mensem or 4,800 per annum. The salaries of the Hindoo and Mahomedan law officers, not being sudder ameens, are 60 rupees and 100 rupees per mensem respectively.

Statement of the criminal business of the zillah and subordinate courts in the Lower Provinces for 1840.

36. The following statement shows the quantity of criminal business depending before, and disposed of by the session and subordinate courts in the Lower Provinces during the year 1840:—

Number of Officers.	Description of Offices.	Number of Prisoners under Examination on the 1st Jan. 1840.	Number Apprehended in 1840.	TOTAL.	Convicted.	Acquitted.	Committed to the Sessions.	Died, Escaped, or Transferred.	Total of Prisoners disposed of.	Prisoners remaining on the 1st Jan. 1841.	REMARKS.
27	Magistrates - -	2,162	(A) 64,192	66,354	40,118	19,547	3,597	643	(B) 63,905	2,449	(A) Heinous cases 16,739
21	Joint Magistrates -										Petty cases - 47,453
30	Assistants to Magistrates - - -										64,192
40	Principal Sudder Ameens - -										
27	Sudder Ameens - -										(B) Number of cases disposed of by
43	Law officers not being Sudder Ameens -										P. S. Ameens - - 1,895
											Sudder Ameens - 1,325
											Law officers - - 3,946
											7,166

	Cases depending 1st January 1840.	Cases Admitted in 1840.	TOTAL.	Total Cases disposed of in 1840.	Cases remaining 1st January 1841.	REMARKS.
Magistrates and joint magistrates.	62	1,862	1,924	1,384	540	- - These are cases of forcible dispossession or disturbance of possession of land, &c.

Number of Officers.	Description of Offices.	Number of Prisoners under Trial, 1st Jan. 1840.	Committed or referred back by Nizamut Adawlut, 1840.	Total.	Convicted.	Acquitted.	Referred to Nizamut Adawlut.	Commitment cancelled, Died, or Escaped.	Total Prisoners disposed of.	Prisoners remaining under Trial 1st Jan. 1841.	REMARKS.
26 1	Session Judges - - Commissioner of Circuit	803	3,633	4,436	2,302	1,001	598	66	3,967	469	—

Cases depending 1st January 1840.	Cases Admitted in 1840.	Total.	Total Cases disposed of.	Cases remaining 1st January 1841.	REMARKS.
513	3,607	4,120	3,757	363	- - Appeals from magistrates and joint magistrates in criminal trials.*
77	846	923	824	99	- - Ditto - ditto in miscellaneous cases.

During this year, 1,361 persons were required by the magistrates to find security for their good behaviour; and the cases of 621 security prisoners were reviewed by the session judges.

* These appeals include second appeals, which are now cut off by Act No. XXXI. of 1841.

Changes in the constitution of the Courts of Sudder Dewanny and Nizamut Adawlut, from 1793 to the present time.

37. The courts of Sudder Dewanny and Nizamut Adawlut at Fort William, as constituted in 1793, consisted of the Governor-general and the members of the Council; but, to obviate the delay of justice which arose under this arrangement, and to separate more distinctly the judicial functions of the government from its legislative and executive authority, each court was made to consist of three judges, styled respectively Chief, Second, and Third judge; the chief judge being one of the civil members of council, and the two puisne judges selected from among the civil servants not members of council. Two judges were necessary to hold a court, and on a difference of opinion arising, the voices of the majority determined the question. The special sittings of the court were summoned by the register under the direction of the chief judge; the senior puisne judge exercising the power of the chief judge during the non-attendance of the latter. 1801.

38. The duties of chief judge, however, were found incompatible with those of a member of council, and to complete the separation of the judicial from the executive authority, it was enacted that the chief judge should be selected in the same manner as the puisne judges. But this law was repealed two years afterwards; the office of chief judge was replaced on its former footing, and provision was made for the appointment of three puisne judges. Ditto. 1805. 1807.

39. The business of the courts being greatly on the increase, the government was empowered to appoint as many puisne judges as might be found necessary for its despatch; and to prevent the interruptions in the proceedings of the courts from the occasional absence or indisposition of the judges, and further to increase the efficiency of the courts, any judge sitting singly was empowered to hold a court, and generally to pass orders or judgments, excepting for the modification or reversal of the orders or judgment of one or more of the judges of the court, or of those of an inferior court. Ditto 1811. 1808. 1810. 1814. 1817.

40. It was provided also, that in cases of a difference of opinion between four judges present, and the number of voices being equal, the chief judge, concurring with any one of the other judges, should possess a casting vote. Ditto.

41. The distinctive appellations of Chief, Second, Third, Fourth, &c. judges of the sudder courts, having in some instances been found productive of inconvenience, they were abolished in 1829. Ditto.

42. In the changes in the judicial system which took place in 1831, separate courts of Sudder Dewanny and Nizamut Adawlut were established at Allahabad for the Western Provinces; and at the same time, in consequence of the accumulation of appeals, civil and criminal, before the sudder courts at Calcutta, the powers of single judges were further increased; the rules on which subject were also made applicable to the Western court. And it was provided that, when in any Ditto.

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any case the opinions of the judges of one court of Sudder Dewanny or Nizamut Adawlut were balanced, the question should be referred to a judge of the other court of Sudder Dewanny or Nizamut Adawlut.

Changes in the constitution of the courts of Sudder Dewanny and Nizamut Adawlut from 1793 to the psesent time.

43. By a recent enactment the sudder courts have been empowered to transfer to their registers the duty of preparing appealed cases for trial, and of executing the decrees and orders of those courts.

Former salaries of the sudder judges.

44. From 1811 to 1829, the sudder court of Calcutta was composed of a chief judge (not being a member of the Supreme Council) whose salary was 5,000 sicca rupees per mensem, and puisne judges drawing sicca rupees 4,583. 5. 4. But the powers of the chief judge, as described above, differed in nothing from those of his colleagues, excepting that special meetings of the court were summoned, when necessary, by his direction; and in cases of equality of voices, when four judges were present, the chief judge, concurring with one of the other judges, possessed a casting vote.

Present salaries of the sudder judges.

Co.'s Rs.
52,200 per annum.
42,000 —

45. The Presidency sudder court now consists of four permanent and three temporary judges; we believe, however, that this arrangement is at present in abeyance by order of the Honourable Court of Directors; that at Allahabad, of three permanent judges. The salary of the permanent judges is 4,350 Company's rupees per mensem; the temporary judges receive 3,500 rupees.

Statement of civil and criminal business of the Courts of Sudder Dewanny and Nizamut Adawlut, for 1841 and 1840 respectively.

46. The following statements show the quantity of civil and criminal business depending before and disposed of by the courts of Sudder Dewanny and Nizamut Adawlut at Calcutta; the former in 1841, the latter in 1840.

CIVIL BUSINESS, 1841.

	Depending 1st Jan. 1841.	Admitted in 1840.	Total.	Decided on Default.	Dismissed on Default.	Adjusted or withdrawn.	Transferred to other Courts.	Total disposed of.	Depending on 1st Jan. 1842.
Regular appeals - - -	446	194	640	220	38	12	- -	270	370
Special appeals - - - -	219	134	353	158	6	2	- -	166	187
	665	328	993	378	44	14	- -	436	557
					Struck off or otherwise disposed of.				
Miscellaneous and summary appeals - - - - - -	477	2,100	2,577	985	1,014	- - -	- -	1,999	576
Miscellaneous petitions and procedure - - - - - -	- -	- -	- -	- -	- -	- -	- -	4,770	—

CRIMINAL BUSINESS, 1840.

	Number of Prisoners under Trial, 1st Jan. 1840.	Prisoners referred in 1840.	Total under Trial.	Convicted.	Acquitted.	Remanded or Commitments Cancelled.	Died or Escaped.	Total Prisoners disposed of.	Total Prisoners remaining 1st Jan. 1841.
Criminal trials - - - -	146	598	744	365	228	59	3	655	89

	Cases pending 1st January 1840.	Cases received in 1840.	Total Cases.	Total Cases disposed of.	Cases remaining 1st Jan. 1841.	
Appeals from sentences of Commissioners of Circuit and Session Judges, or trials called for.	20	95	115	100	15	
Special appeals from orders of Commissioners of Circuit and Session Judges, on appeals from Magistrates and Joint Magistrates.	110	387	497	432	65	- - These special appeals are now cut off by Act No. XXX. of 1841.

47. We should observe, that the preceding narrative does not embrace those parts of the territories of the Bengal presidency, in which the Regulations are not in force, and in which are established special systems of judicial administration, but the statements of business in the Calcutta sudder courts include cases received from the special courts subject to its jurisdiction.

Preceding narrative does not embrace the non-regulation provinces.

48. The Madras judicial system, instituted in 1802, was formed upon the model of that established in 1793, for Bengal. It consisted of—

Madras judicial system instituted in 1802.

CIVIL JUDICATORIES

Zillah courts for the trial of civil suits in the first instance, without any limitation as to the amount or value of the subject of litigation;

Zillah courts.

Provincial courts of appeal, for hearing appeals from the zillah courts;

Provincial courts of appeal.

And a sudder adawlut at the presidency, for hearing appeals from the provincial courts.

Sudder Adawlut.

49. The judges of zillah courts were authorised to refer to their registers suits to an amount not exceeding 200 rupees, with a discretionary power to revise their decisions, and to grant commissions to natives to hear and decide suits for a value not exceeding 80 rupees, viz. suits preferred to them directly against under-renters or ryots; suits against other persons referred to them by the judge; and suits submitted to them as arbitrators.

Registers of zillah courts.

Native commissioners.

50. In 1809, the original jurisdiction of the zillah courts was limited to suits not exceeding 5,000 rupees, and suits exceeding that amount were transferred to the jurisdiction of the provincial courts.

Jurisdiction of zillah courts limited. Jurisdiction of provincial courts extended

In the same year, the occasional appointment of assistant judges, to aid the judges of zillah courts in disposing of arrears, was authorised; and the jurisdiction of registers was extended to 500 rupees.

Assistant judges of zillah courts. Register's jurisdiction extended.

The original jurisdiction of native commissioners or moonsiffs was also extended to embrace all suits for money or personal property within the former limitation of 80 rupees; and authority was given for the appointment of head native commissioners, or sudder ameens, for the trial of suits referred to them by the judges, not exceeding 100 rupees.

Native commissioners or moonsiffs idem.

Head native commissioners or sudder ameens appointed.

The same jurisdiction was conferred upon the law officers of the zillah courts, *ex-officio*.

51. In 1816, the office of moonsiff was put on an improved footing, following the arrangement made in Bengal in 1814. Every zillah was divided into districts, comprising one or more whole tahsildaries or police jurisdictions, to each of which a "district moonsiff" was appointed, with power to determine suits to the value of 200 rupees.

District moonsiffs.

In the same year, a Regulation was passed declaring the head inhabitants of villages to be moonsiffs in their respective villages, with power to decide suits to the value of 10 rupees, and to settle by arbitration suits to the value of 100 rupees.

Village moonsiffs.

And the old institution of punchayets was revived for the adjudication of suits, without limitation of amount or value, upon the agreement of both parties to that mode of trial. Village punchayets to be assembled by the village moonsiffs, and district punchayets by the district moonsiffs; the jurisdiction of the former being restricted to suits for money, or other personal property; that of the latter being unrestricted.

Punchayets.

The appointment of sudder ameens was restricted to the law officers of the zillah courts, the jurisdiction being extended to 3,000 rupees.

Jurisdiction of sudder ameens extended.

52. In 1821, the jurisdiction of registers of zillah courts was extended to 1,000 rupees, of sudder ameens to 750 rupees, and of district moonsiffs to 500 rupees.

Jurisdiction of registers, sudder ameens, and district moonsiffs extended.

53. In 1833, the jurisdiction of these officers was further extended to 3,000 rupees, 2,500 rupees, and 1,000 rupees respectively; and these are the present limitations.

Jurisdiction of registers, sudder ameens, and district moonsiffs further extended.

54. There are 19 districts in the Madras presidency. Formerly each district constituted a "zillah," and had its own zillah court. But in 1827 a considerable change was made, first by the establishment of auxiliary courts under assistant judges, with the full power and authority of zillah courts, and afterwards of courts with

Auxiliary zillah courts established under assistant judges and native judges.

No. 9.
Training of Junior Civil Servants.

with nearly* similar powers under native judges, now called principal sudder ameens. In eight of the 19 districts, the zillah courts have been abolished. In seven of those districts they have been succeeded by courts under assistant judges, and in the remaining one by a court under a principal sudder ameen.

In one zillah, Malabar, besides the zillah court, there are two auxiliary courts under assistant judges. In another zillah, Canara, there are also two auxiliary courts, under principal sudder ameens.

Provincial courts.

55. The provincial courts are each composed of three judges, members of the civil service.

Until 1831, two judges were required to constitute a court. In that year, a Regulation was passed authorising the judges to sit singly, subject to the restriction of not reversing any order or decision passed by another judge of the court, or by any subordinate court.

Provincial courts.

56. At first the provincial courts had no original jurisdiction, except in cases specially transmitted to them by the Sudder Adawlut. Since 1809, they have had original jurisdiction in all cases above 5,000 rupees.

Sudder Adawlut.

57. The Sudder Adawlut, or chief court of appeal, as originally constituted, consisted, as in Bengal, of the Governor and the members of council.

By Regulation IV. of 1806, it was enacted that the Governor should be the chief judge, and that the second and third judges should be appointed from among the covenanted civil servants, not being members of council.

By Regulation I. of 1807, it was enacted, that the chief judge should also be selected from among the covenanted civil servants, not being members of council.

By Regulation III. of the same year, it was enacted that the courts should in future consist of a chief judge, being a member of council, but not the Governor nor the Commander-in-chief, and of three puisne judges, to be selected from among the Company's covenanted servants; and this constitution has continued ever since, except that the Governor in Council is empowered by law to appoint additional judges at his discretion.

Sudder Adawlut.

58. In 1816 the Sudder Adawlut was empowered to call up from the provincial courts original suits amounting to 45,000 rupees. This power it is believed has never been exercised.

Ditto.

59. Until 1831 two judges were required to constitute a court. By Regulation VIII. of that year the judges were empowered to sit singly, subject to the restriction of not reversing orders and decisions passed by another judge of the court or by subordinate courts. The puisne judges are designated as first, second, and third. When sitting together the senior presides, but he has not a casting voice. If three judges are present, the majority decide; if two, and they differ, they are to wait for the attendance of the third.

The chief judge never sits except when one of the puisne judges is absent, and there is a difference of opinion between the two who are present, or when there is only one judge present, and a case arises in which he thinks the decision of the lower court should be reversed, for which the concurrence of another judge is necessary.

60. Below are presented at one view the several civil judicatories at present existing, with a specification of their jurisdiction, original and appellate.

COURT.	ORIGINAL JURISDICTION.	APPELLATE JURISDICTION.
Sudder Adawlut, Composed of a chief judge, a member of the council, and three puisne judges, members of the civil service; salary of each puisne judge, 49,000 rupees per annum.	Authorised, at discretion, to call up original suits, filed in the provincial courts, amounting to 45,000 rupees and upwards.	Regular appeals from decrees of the provincial courts in original suits. Special, from decrees of the provincial courts on regular appeals from decrees of zillah judges, and from decrees of assistant judges and principal sudder ameens in suits above 1,000 rupees.

* The difference is, that principal sudder ameens are restricted from taking cognizance of suits in which European officers of government are concerned.

COURT.	ORIGINAL JURISDICTION.	APPELLATE JURISDICTION.
Provincial Courts, Each composed of three judges, members of the civil service. The salary of the 1st Judge, 42,000 Rs. p' ann. 2d ditto 38,500 Rs. ditto 3d ditto 35,000 Rs. ditto	Original suits above 5,000 rupees.	Regular, from decrees of zillah judges in original suits, and from decrees of assistant judges and principal sudder ameens in original suits above 1,000 rupees. Special, from decrees of zillah judges on regular appeals from assistant judges, principal sudder ameens, registers, and sudder ameens.
Zillah Courts. Salary of the judge, 28,000 rupees per annum.	Original suits to the amount of 5,000 rupees.	Regular, from decrees of assistant judges and principal sudder ameens in original suits not exceeding 1,000 rupees, and from decrees of registers, sudder ameens, and district moonsiffs. Special, from decrees of assistant judges, principal sudder ameens, registers, and sudder ameens, on regular appeals from district moonsiffs.
Auxiliary courts under assistant judges. Salary of the assistant judge, 16,800 rupees per annum.	Original suits to the amount of 5,000 rupees.	Regular, from decrees of sudder ameens and district moonsiffs. Special, from decrees of sudder ameens on regular appeals from district moonsiffs.
Auxiliary courts under principal sudder ameens. Salary of principal sudder ameen (uncovenanted), 6,000 rupees per annum.	Original suits to the amount of 5,000 rupees.	Regular, from decrees of district moonsiffs.
Attached to Zillah Courts. Register's Salary, 1st Class, 8,400 Rs. per ann. 2d Ditto, 7,200 Rs. ditto.	Original suits referred by the judge to the amount of 3,000 rupees.	Regular appeals from decrees of sudder ameens and district moonsiffs referred by the judge.
Attached to Zillah and Auxiliary Courts. Sudder ameen's salary, 2,400 rupees per annum.	Original suits referred by the judge, &c., to the amount of 2,500 rupees.	Regular appeals from district moonsiffs referred by the judge, &c.
District Moonsiffs. Salary, 1st Class, 1,680 Rs. per ann. 2d Ditto, 1,380 Rs. ditto. 3d Ditto, 1,200 Rs. ditto.	Original suits to the amount of 1,000 rupees, preferred directly, or referred by the judge.	
Village Moonsiffs.	Original suits to the amount of 10 rupees preferred directly as arbitrator, at the request of both parties, to the amount of 100 rupees; jurisdiction confined to suits for money or other personal property.	
District punchayets assembled by district moonsiffs.	Suits for real and personal property without limitation of amount or value, both parties consenting.	
Village punchayets assembled by village moonsiffs.	Suits for money or other personal property without limitation of amount or value, both parties consenting.	

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Criminal judicatories. Office of magistrate vested in zillah judges.

61. As in Bengal, the office of magistrate was originally vested in the zillah judges, who were also charged with the superintendence of the police. The jurisdiction of the magistrate was confined to petty offences, and petty thefts, as it was in Bengal prior to 1807, their power of punishment being limited to imprisonment for 15 days or a fine of 50 rupees, (200 rupees in the cases of zemindars, &c.) for the former, and imprisonment for one month, or 30 strokes with a rattan, for the latter.

Transferred to collectors.

62. In 1816 a great change was made by transferring the office of magistrate and the superintendence of the police to the collectors of revenue, with the same jurisdiction and powers of punishment as had been previously vested in the zillah judges. The zillah judges were still however charged with criminal jurisdiction, the cognizance of cases punishable by six months' imprisonment with 30 strokes with a rattan, or a fine of 200 rupees, having been transferred to them from the courts of circuit, and to them was left the duty of committing to the court of circuit persons charged with graver offences brought before them by the magistrate or by the police.

Powers extended.

63. In 1822 the criminal judges were empowered in special cases to pass sentence of imprisonment for two years, with corporal punishment not exceeding 30 strokes with a rattan, (since commuted to 130 lashes with cat of nine tails) and this is the maximum of their power at present.

Joint criminal judges.

Principal sudder ameens.

64. Assistant judges of auxiliary courts are joint criminal judges of their zillahs, and have the same power and authority as the criminal judge. So also have principal sudder ameens, except in cases in which persons charged with offences are Europeans or Americans.

Sudder ameens.

65. Sudder ameens of zillah and auxiliary courts are authorised to exercise jurisdiction in criminal cases referred to them by the criminal judge, joint criminal judge or principal sudder ameen presiding in the court, with the same power of punishment as the presiding officer; but their sentences are liable to revision by him.

Magistrates, joint magistrates, and assistants.

The local limits of their charges or in cases referred to them.

66. The jurisdiction of magistrates remains in general as it was settled in 1816; but as in Bengal they have extended powers under particular acts, sub-collectors are joint magistrates, and assistant collectors are assistant magistrates, with the powers of the magistrates within the local limits of their charges, or in cases referred to them.

The courts of circuit were originally constituted as in Bengal, and still exist, exercising the same jurisdiction and powers as were exercised by those in Bengal until 1829.

Foujdarrie Adawlut.

67. The judges of the Sudder Adawlut are also judges of the Foujdarrie Adawlut. The jurisdiction of the court corresponds with that of the Nizamut Adawlut of Bengal.

68. We subjoin statements of the administration of civil and criminal justice by the several judicatories in the presidency of Madras from 1st July 1839, to 30th June 1840, the latest period, 12 months, of which we are able to give any account.

Changes lately recommended.

Civil department.

69. We have recommended* the abolition of the provincial courts, and have proposed to establish 18 superior zillah courts to take up the whole of the appellate jurisdiction heretofore exercised by them, (except in cases liable to the jurisdiction of the Privy Council reserved for the Sudder Adawlut) together with the appellate jurisdiction of the zillah and auxiliary courts as at present constituted, and to organize a set of subordinate but independent zillah courts, by continuing those already established in some districts under assistant judges and principal sudder ameens, and by establishing others of the same class in all the rest, to exercise original jurisdiction in all cases now cognizable originally as well by the provincial† courts as by the present zillah and auxiliary courts; that is to say, in all cases beyond the jurisdiction of district moonsiffs, and in all cases within the jurisdiction of district moonsiffs in which the parties suing prefer to have

* Reports, 21st August 1840, and 10th July 1841.
† Report, 4th December 1841.

have their causes tried and decided by them, but not to exercise appellate jurisdiction except in cases referred to them by the superior zillah court, or under special orders.

70. We have also proposed that the office of register shall be abolished.

71. We have recommended that the subordinate zillah courts shall be conducted partly by assistant judges and partly by principal sudder ameens, or principal sudder ameens; or in other words, partly by covenanted civil servants and partly by natives and other persons not covenanted, at the discretion of the local government. In making this recommendation, we stated* that we looked to dispensing eventually with assistant judges altogether, and placing all the judges in courts of this class on the footing of principal sudder ameens, but that we thought it expedient that the change should be brought about gradually.

72. The subject has been referred to the government of Madras, with an intimation from the government of India that it is considered desirable to get rid of the class of assistant judges altogether, and to introduce the principle of making over to uncovenanted judges (native or European) the duties of original jurisdiction, unless in cases reserved on very special grounds, and of confining the European covenanted judges to the decision of appeals and to the functions of general control. It is not expected that it will be possible to do this all at once, but the Governor-general in Council has expressed a hope that it will not be necessary in carrying the proposed reforms into effect to add to the present number of covenanted assistant judges, which is above shown to be nine.

73. In the department of criminal justice we have recommended that the jurisdiction now exercised by the courts of circuit should be vested in the judges of the superior zillah courts as session judges, and that the present jurisdiction of criminal judges shall be exercised by the judges sitting in the subordinate zillah courts, who shall also commit to the superior court persons charged with crimes and offences beyond their own jurisdiction, as the criminal judges now commit to the courts of circuit; leaving the existing system untouched in other respects. But we believe that further changes have been proposed by the government of India. Criminal Department.

STATEMENT showing the Civil Business done by the Courts in the Presidency of *Madras*, 1839–40, and remaining.

	ORIGINAL SUITS.			APPEALS.		
	Disposed of.	Instituted.	Depending.	Disposed of.	Instituted.	Depending.
Sudder Adawlut	- -	- -	- -	12	24	42
Provincial Courts of Appeal - Centre	9	12	22	75	67	90
Northern	18	11	29	38	29	59
Southern	10	7	5	30	35	13
Western	4	4	4	23	39	46
Total	41	34	60	166	170	208
Superior Zillah Judicatories:						
Judges and assistant judges	1,167	9,288	1,381	1,107	2,348	1,581
† Assistant judge attached to a zillah court	2	- -	35	62	- -	164
Principal sudder ameens	135	643	108	59	59	25
Registers	402	(a)	395	339	(a)	350
Sudder ameens	7,445	(a)	3,074	662	(a)	183
Superior Zillah Judicatories Total	9,151	9,931	5,993	2,229	2,407	2,303

(*continued*)

* Report 21st August 1840.

† Under Reg. VII. of 1809.

(a) No suits are instituted before the register and sudder ameens. What they receive are referred to them by the judge, assistant judge, or principal sudder ameen of the court, before whom all are instituted.

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	ORIGINAL SUITS.			APPEALS.		
	Disposed of.	Instituted.	Depending.	Disposed of.	Instituted.	Depending.
Inferior Zillah Judicatories:						
Moonsiffs { District	52,395	55,336	23,018	—		
Moonsiffs { Village	4,035	3,926	1,854	—		
Total	56,430	59,262	24,872	—		
Punchayets { District	16	16	21	—		
Punchayets { Village	14	6	6	—		
Total	30	22	27	—		
Inferior Zillah Judicatories — Total	56,460	59,284	24,899	—		
GRAND TOTAL	65,652	69,249	29,952	2,395	2,577	2,511

ABSTRACT of the Administration of Criminal Justice by the Judicial Functionaries in the Madras Presidency, 1839–40.

	Balance.	Offenders apprehended.	Total Number of Persons charged under the Police Courts of Criminal Jurisdiction.	Acquitted or Discharged.	Convicted and Punished.	Confined.		Fine.	Flogging.	Imprisonment.			Imprisonment.				Detained for Security.	Committed for Trial.	Transferred.	Died, Insane, &c.	Balance remaining.
													Simple.		With Flogging.						
						Choultra.	Stocks.			Simple.	With Fine.	With Flogging.	Not exceeding 7 Years.	Above 7 Years.	Not exceeding 7 Years.	Above 7 Years.					
Village Police	–	5,700	5,700	2,365	3,335	2,344	991	–	–	–	–	–	–	–	–	–	–	–	–	–	–
District ditto	2,423	106,660	109,083	79,257	27,338	8,404	484	18,180	270	–	–	–	–	–	–	–	–	–	102	–	2,386
Magistrate	72	7,920	7,992	5,237	2,695	–	–	1,727	216	812	–	–	–	–	–	–	–	–	–	–	60
Criminal Courts	–	–	7,752	2,975	2,140	–	–	515	39	1,248	78	260	–	–	–	–	318	1,800	10	15	494
Circuit ditto	–	–	2,093	727	781	–	–	–	–	–	9	–	380	341	21	30	–	–	–	–	585
TOTAL	–	–	132,620	90,561	36,289	10,748	1,475	20,422	525	2,060	87	260	380	341	21	30	318	1,800	112	15	3,525

	Total Number of Persons charged under the Police Courts of Criminal Jurisdiction.	Acquitted or Discharged.	Convicted and Punished.	Death.	Transportation.		Imprisonment for Life.	Imprisonment.			
								Simple.		With Flogging.	
					With Flogging.	Without Flogging.		Under 7 Years.	Above 7 Years.	Under 7 Years.	Above 7 Years.
Foujdaree Adawlut	352	53	289	52	9	85	14	58	62	2	5

Bombay presidency. Number of districts comprised therein.

74. The Presidency of Bombay comprises (12) twelve districts, of which six are on the coast (Goojurat and the Konkans), and six above the Ghats (the Dekhan, Khandesh, and the Southern Mahratta country).

Each district how superintended before 1827.

75. Under the system which obtained until 1827, each district had a judge and a collector, except in the territories above the Ghats, where, after the Dekhan was formed into zillahs in that year, one judge presided over two collectorates.

Civil courts.

76. The European judicial functionaries in each zillah were, under the denomination of judge, register, and assistant-register, vested with the trial of all original

original suits, except those of very small amount. The judge tried all original suits beyond the cognizance of the register, and all appeals. The register's jurisdiction was at first limited to suits of rupees 200, but his decrees were final up to rupees 25. His powers were afterwards raised to rupees 500, and assistant registers were appointed for trial of the suits under rupees 200, which the register used to decide.

Powers of judge.
Register.
Regulation I. of 1802.
Regulation II. of 1808.
Assistant registers.

77. Special powers were then conferred on registers who had served six years in the judicial line, enabling them to try original suits not exceeding rupees 1,000, and to hear appeals from the assistant register, sudder ameens, and moonsiffs; his decisions thereon being final, unless under special appeal. Appeals from his decisions in original suits above rupees 500 went direct to the Sudder Adawlut.

Registers, special powers.—Regulation VI. of 1820.

78. In A. D. 1827, the jurisdiction of the register and assistant registers (from that time termed senior and junior assistant-judges), was greatly enhanced; but in 1830 all original jurisdiction was entirely taken away from the European functionaries of every grade, except as to suits in which the government was a defendant, or any European or American, or any near relative or dependant of a native judicial servant of any grade was a party. And by Act XI. of 1836, principal sudder ameens and sudder ameens were empowered to try suits in which Europeans or Americans are parties. The suits still reserved from cognizance of natives are tried by the assistant judge, from whose decision an appeal lies to the judge. If he confirm the decree, his decision is final, otherwise the case may be further appealed to the Sudder Adawlut.

Changes made by Code of 1827.
Original jurisdiction taken away from European judges.

79. In the Dekhan, where natives of rank (sirdars), are exempted from the jurisdiction of the ordinary courts, the judge of Poonah, under the title of agent for sirdars in the Dekhan, and the judge of Dharwar, as agent for sirdars in the Southern Mahratta country, try all cases in which any native of rank within their respective jurisdictions is defendant. These sirdars are divided into three classes, and an appeal lies to the Governor in Council, and not to the Sudder Adawlut, in all cases wherein a sirdar of the two first classes is a party.

From decisions in sirdar cases by the assistant agents, an appeal lies to the agent in the first instance, and from his decision a special appeal, either to the Governor in Council or the Sudder Adawlut, as the case may be.

Sirdars' suits in the Dekhan.

80. The whole number of original suits decided by (16) European functionaries in 1838 was 84; of which 65 were sirdar cases: the proportion of the whole number (84) to that decided by natives is only 1.35 to 1,000.

Original suits decided by European officers in 1838.

The civil functions of the zillah judge are thus, with a trifling exception, confined to deciding ordinary and special appeals, from his assistants, and from the native tribunals. The assistant judges try appeals from the native functionaries' decisions, as referred to them by the judge, or filed by themselves if at a detached station.

Present civil functions of judges.
And assistant judges.

81. The salary of every zillah judge is rupees 28,000 except at Surat, where it is rupees 30,000.

That of an assistant judge at a detached station is rupees 14,400.

At the sudder station, rupees 8,400.

Salaries of European officers.

82. By the Code of 1827, civil jurisdiction over a certain class of suits, those relating to land, was given to the collectors of revenue, their assistants and head native officers; and by a very wide construction put upon this part of the code, the entire cognizance of every suit having the most remote connexion with land, was taken away from the zillah courts, and transferred to the collectors. A limit has, however, been put to this very extensive jurisdiction by Act XVI. of 1838, and the revenue officers are now confined to, 1st, giving possession of lands or the like to any party forcibly dispossessed of the same, if a plaint be preferred within six months of the date of dispossession.

Collectors' courts.

2dly. Cognizance of all disputes regarding rent of the current or former years, between ryot and superior holder, which the parties may submit to arbitration of the revenue officers.

3dly. Of all questions regarding use of wells, tanks, and water-courses, or of roads, and

4thly. Of all disputes respecting boundaries, such being by the Act still reserved for the collectors' courts.

Jurisdiction of native judges.

Regulation VII. of 1802.—Ditto II. of 1808.

Increased in 1827 to 5,000 rupees.

Made unlimited in 1830.

83. The civil jurisdiction conferred on the native judicial servants was exceedingly limited until 1827, moonsiffs being only empowered to try suits for rupees 50; sudder ameens for rupees 100. In that year every native functionary, then termed commissioner, was empowered to decide causes up to rupees 500; and might have his powers extended to rupees 5,000. In 1830, original jurisdiction, to an unlimited extent, was conferred on every native functionary; that of the European officers being strictly confined to a few special cases already mentioned.

Reduced in 1831.

84. In the following year, however (1831), this jurisdiction was very much circumscribed; the principal sudder ameens alone being invested with unlimited original jurisdiction; the power of hearing appeals from decisions of other native functionaries up to rupees 100 being also conferred upon them. The jurisdiction of sudder ameens was confined to rupees 10,000; that of moonsiffs reduced to rupees 5,000, the limit fixed by the Code of 1827.

Have no criminal jurisdiction.

85. The native judicial functionaries of the Bombay presidency have no criminal jurisdiction whatever.

Court of appeal.

86. From the zillah courts, constituted as above, an appeal formerly lay to the court of appeal in Goojurat, and from it to the Sudder Adawlut at the presidency. The court of appeal (while in existence) had also jurisdiction for the trial of any original suits referred to it by the Sudder Adawlut, but we have no reason to believe that it was ever called upon to exercise it.

Had original jurisdiction.

Its abolition.

In 1820 it was found practicable to abolish the first-named court as an intermediate court of appeal; and though it was judged expedient to re-organize a court of appeal for Goojurat in 1828, it was again and finally abolished in 1830.

Leaving a direct appeal to Sudder Udawlut.

87. In the presidency of Bombay, therefore, for the last 22 years, with exception of a brief interval, the appeal has been immediate from the zillah courts to the court of highest resort in civil cases.

Sudder Udawlut how first constituted.

88. The system, which at one time prevailed at the other presidencies, of vesting in the Governor in Council the supreme jurisdiction, both civil and criminal, was

Re-organized in 1820.

in force at Bombay so late as A. D. 1820. In that year, on the abolition of the Goojurat court of appeal, the judges of it were constituted the judges of the Court of Sudder Dewanee and Sudder Foujdaree Udalut, the Governor and members of council being thenceforth relieved from the judicial duties which, as judges of that court, they had hitherto been required to perform.*

And again in 1830.

89. The new Court of Sudder Dewanee and Sudder Foujdaree Udalut was composed of a chief and three puisne judges, the puisne judges being still required to perform their former functions of a circuit court, visiting the different zillahs (the Six Coast Districts) then subject to their jurisdiction, delivering the goals, and generally performing all the duties devolving on a circuit court.

Puisne judges perform circuits.

90. These combined labours of a superior and circuit court having been found too onerous for the judges of a single court, the court of circuit and appeal was, in 1828, re-organized, but soon abolished as above stated. The duties of a court of circuit however were not again imposed on the Sudder Foujdaree Udalut, but instead thereof the zillah judges were, under the designation of session judges, invested with the ordinary jurisdiction of a court of circuit as regards the trial of criminal cases; and the three junior puisne judges of the Sudder Foujdaree Udalut, though still required to perform circuits, were relieved "from holding any but State trials or any other trials of a peculiar or aggravated nature which from any circumstance government, on report from the local authority, may wish to be reserved for that purpose."

They are only required, on these circuits, to receive petitions, and make a general inquiry into the judicial management of each zillah visited by the commissioner.

Three circuits.

91. The presidency, for this purpose, is divided into three circuits, which may be termed the northern, middle, and southern, each being visited once in the year by one of the commissioners.

92. In

* In 1827, the Governor in Council was made a special court for trying, in place of the Sudder Udalut, appeals from decisions passed by the zillah judges above the ghats, as agents for sirdars. *Vide* paragraph 79. These functions the Governor in Council still exercises.

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92. In order to provide for the due performance of the duties of the Sudder Udalut during the absence of the puisne judges on these circuits, one of the members of council was constituted chief judge of the court, as is still the case at Madras; but his functions were expressly limited to attending in court when a full court of three judges could not be assembled without his attendance. The Honourable Mr. Anderson, in his capacity of chief judge, presided at the trial of five causes in the first half of 1840, and this is the only instance we can find in which the Member of Council has been called in, since his appointment for this particular duty.

Member of council made chief judge. Regulation I. of 1830. Extent of his duties.

93. Neither the chief nor senior puisne judge has any superior function except that of having the casting vote when the number of voices happens to be equal.

No superior powers.

94. The judges when present at the seat of the court are occupied in trying appeals direct from the decisions of assistant judges in cases above 5,000 rupees, and regular and special appeals from the decisions in appeal by the judges and assistant judges, as well as in miscellaneous business. Appeals to the Sudder Dewanee Udalut are, in the first instance, taken up by a single judge of the court; and if he is disposed to concur in the decision of the lower court, his decree, affirming it, is final; but if he see reason to doubt the correctness of the decision, or find in the case any point of interest or importance that has not been yet decided, he refers it to a full court, consisting of three judges, of whom he may himself be one. In criminal cases the court has to revise all sentences passed by session judges for more than seven years' imprisonment, or solitary confinement for six months, and has generally to exercise control over all zillah judges and magistrates.*

Civil duties of the court. Mode in which civil appeals are tried. Criminal duties of the court.

95. The salary of the senior puisne judge has for some years been fixed at - - - - - - - - - - - *Rs.* 40,000
That of the second at - - - - - - - - - 36,000
Each of the others at - - - - - - - - - 35,000

By very late orders from England it is understood that the senior and each of the other puisne judges is hereafter to receive rupees 42,000 per annum. The three juniors get each 316 per mensem, as travelling allowances, in addition.

Salaries of the judges.

96. The criminal and magisterial powers of the subordinate authorities may be very briefly explained.

Subordinate criminal tribunals.

97. Formerly, each judge, besides being the criminal judge, was also the magistrate of his own zillah, until 1818, when the duties of magistrate were transferred to the collector, except at the sudder station of each court, which remained subject to the control of the judge, as magistrate; but in 1830 the police and magisterial duties of each sudder station were also transferred to the collectors, except at the city of Surat, where they are still performed by the judge.

Criminal judge was also magistrate of his district till 1818. Collectors now magistrates.

98. In 1830 the powers of the criminal judge were increased to those of a session judge, in which capacity he has to perform all the functions of a court of circuit, trying (with the aid of his assistants) all cases involving more than one year's imprisonment; and, the number of zillahs having been reduced to six by placing two collectorates under the jurisdiction of one court, the session judge, in four out of the six, has to perform circuit twice a year to the subordinate division of the zillah, there to deliver the gaol, and generally scrutinize the state of the establishment.

Criminal judges made session judges, 1830. Perform circuits.

99. The assistant judges try criminal cases referred to them by the session judge (or, at the detached stations, those committed by the magistrate) having power to sentence to two, or (with special powers) subject to confirmation by the session judge, to seven years' imprisonment with hard labour. The assistant judges at detached stations have somewhat higher powers, both civil and criminal, than those immediately under the judge's superintendence; they prepare cases for the sessions, have charge of the gaol, &c.

Duties of assistant judges. Act XIX. of 1830.

100. Every collector, or sub-collector, as magistrate, or joint magistrate, has been since 1818 vested with the entire magisterial and police duties of his own district;

Collector also magistrate.

* We observe from the draft of a law lately published, that in civil cases the same course of procedure is about to be prescribed for the sudder courts of the Bengal and Agra presidencies.

His powers.

district; and, since 1830, of the sudder station also. He has jurisdiction in criminal cases to the extent of awarding one year's imprisonment, with hard labour and fine. All cases requiring greater punishment than this he commits for trial to the session judge. The assistant collectors are also assistant magistrates. Under the Code of 1827, magistrates had power to adjudge to fine, ordinary imprisonment not exceeding two months, flogging to thirty stripes, and personal restraint. Assistant collectors were constituted assistant magistrates; the magistrate having power to refer to them any cases within his own cognizance, but with liberty to mitigate or annul any sentences passed by them. By a Regulation passed in the same year for the Dekhan, then first brought under the operation of the General Regulations for the presidency, much greater powers than those above stated were conferred on the magistrates in that province, to the extent of two years' imprisonment with hard labour, fine, flogging, and personal restraint. In 1829 the power was given to government to invest assistant magistrates with the same powers. In 1830 these powers were reduced, and those of the magistrates and assistant magistrates in the other parts of the presidency were enhanced to one year's imprisonment with hard labour; and this is now everywhere, the limit to the magistrate's penal jurisdiction under Bombay. Sentences exceeding three months' imprisonment, passed by assistant magistrates, must be confirmed by the magistrate.

Assistant collectors are assistant magistrates.

Ordinary powers of magistrate.

Special in the Dekhan.

Reduced and made uniform everywhere.

101. The salaries of the Revenue and Magisterial departments are as follow:

		Per Mensem.	Per Annum.
Principal collector of Surat	Rupees	2,666	32,000
All other collectors and magistrates	,,	2,333	28,000
Sub-collector and joint magistrate	,,	1,400	16,800
First assistants	,,	800	9,600
Ditto, rutnagiree and kaira	,,	700	8,400
Second assistants	,,	550	6,600
Third assistant principal collector	,,	500	6,000
Third assistants	,,	400	4,800
Fourth assistant principal collector	,,	450	5,400
All others	,,	300 to 400	3,600 to 4,800

Original suits.

102. Statement of causes decided by the courts under the Bombay presidency, 1838.

ORIGINAL SUITS.	No.	Balance depending.	Filed.	Total.	Decided on merits.	Adjusted or withdrawn.	Dismissed.	Total.	Balance.
European Agency:									
Judges as agents for sirdars	2	4	7	11	2	2	1	5	6
Assistant ditto	1	25	52	77	53	-	7	60	17
Judges	6	—							
Assistant ditto	10	14	15	29	10	1	11	22	7
Total	16	43	74	117	65	3	19	87	30
Native Agency:									
Principal sudder ameens	6	371	4,301	4,672	2,838	549	703	4,090	582
Sudder ameens	14	841	12,504	13,345	8,177	2,597	1,699	12,473	872
Moonsiffs	66	3,726	46,627	50,353	27,143	12,828	5,704	45,675	4,678
Jahgeerdars	not known	144	418	562	353	-	70	423	139
Total	86	5,082	63,850	68,932	38,511	15,974	8,176	62,661	6,271
GRAND TOTAL	-	5,125	63,924	69,049	38,576	15,977	8,195	62,748	6,301
APPEALS.									
Agent	2	3	25	28	20	-	-	20	8
Judges	6	518	919	1,437	1,017	51	34	1,102	335
Assistant judges	10	378	1,875	2,253	1,222	42	75	1,339	914
Principal sudder ameens	1	11	76	87	81	1	4	86	1
Total Subordinate Courts	19	910	2,895	3,805	2,340	94	113	2,547	1,258
Sudder Adawlut	4	116	129	245	143	-	-	143	102

103. Abstract of work performed by judges of the Sudder Dewanny Udalut, Bombay, 1838.

	Sitting as single Judge.			Sitting in full Court of Three Judges.	Decided by full Court.			
	Confirmed.	Referred.	Total.		Confirmed.	Amended.	Reversed.	Total.
Simson - - -	15	5	20	57				
Giberne - - -	27	25	52	19				
Pyne - - - -	15	30	45	76				
Greenhill - - -	10	29	39	76				
	67	89	156	- -	19	12	38	69
By the full court - -	19	- -	- -	- -	19	- -	12	—
Total Confirmed -	86	- -	- -	- -	- -	- -	50	—

104. Statement showing the amount of criminal business disposed of by the tribunals under the Bombay presidency, 1838.

Balance of past year with district and village officers - - -			648
Magistrates - - -			300
Judges - - - -			316
			1,264
Received during the year - - - - - - - - -			37,987
Total - - -			39,251
Disposed of - By district and village police: Acquitted - -	12,301		
Punished - -	12,939		
Under examination,	703		
			25,943
Transferred to magistrate -			13,308
By magistrate: Acquitted - -	5,818		
Punished - -	4,200		
Under examination,	548		
			10,566
Transferred to judge - - -			2,742
By judge - Acquitted - -	1,052		
Punished - -	1,401		
			2,453
Under examination by judge -			289

Sudder Foudjaree Udalut.

Number of offenders whose trials referred - - - - -		272
Sentences confirmed: Death - - - - - -	22	
Transportation for life - - -	29	
Imprisonment for life - - -	6	
Ditto with fine - - - -	187	
		244
Acquittals - - - - -		28
Review of sentence on petition - - - - - - - -		291
Confirmed - - - -	201	
Mitigated or annulled - - -	90	
		291

Principle of employing native agency for the disposal of original suits.

105. It will be seen from the foregoing narrative that the system now in operation for the administration of civil justice in the territories of the Bengal and Bombay presidencies, and which it is proposed to extend to those of Madras, is based upon the principle of employing native industry and intelligence in the primary disposal of suits, under the safeguards of an immediate appeal to the European functionaries, and of their constant and vigilant supervision of the general conduct of the native judges.

Absence of judicial training in those destined to become civil judges of appeal.

106. To the justice and sound policy of this principle we cordially subscribe; but in reducing it to practice, an evil of a very serious nature has been incurred, which has already been extensively felt, and which if not remedied will greatly impair the judicial administration. We allude to that which has attracted your Lordship's attention, the absence of all previous training in those to whom as judges of first and local appeal the government must principally look for the guidance and control of the courts of primary jurisdiction. At present there is not a single situation in the civil branch of the Judicial Department in Bengal open to a covenanted servant before his elevation to the important office of zillah judge; nor in Bombay do the zillah and assistant judges exercise any original jurisdiction before they are invested with appellate jurisdiction.

And session judges in some cases.

107. In the criminal branch, those civil servants who have risen through the grades of assistant, joint magistrate, and magistrate, have the benefit of the knowledge and experience acquired in those offices when called to exercise the powers of a session judge; but in Bengal at least, such a preparation is not considered indispensable, and an officer conversant only in revenue matters is equally eligible to that appointment.

Principle of admission to the Company's civil service, and educational training of their civil servants.

108. In devising a remedy for this anomalous state of things we have been led to review generally the principle of admission to the Honourable Company's civil service, and the educational training both in England and India which the persons nominated have to undergo before entering upon the active business of life.

Great importance of subject.

109. Considering the great importance of the duties which the civil servants of the Company are destined to perform in the various branches of our Indian administration, and the extent to which, from the weakness of the native character, the happiness of the people depends upon the individual dispositions and capacities of the officers placed over them, it will readily be admitted how essential it is to the credit of the government and the welfare of the millions committed to their charge, to raise to the utmost the moral and intellectual qualifications of the covenanted civil service. In the depressed condition of the people caused by the long period of misrule and confusion which preceded the establishment of British supremacy in India, the benefits of the strong and settled government which succeeded were no doubt sensibly felt; though the instruments employed were but ill qualified by previous education and pursuits for the discharge of the new duties which devolved upon them; but circumstances are now greatly changed. Population has increased; cultivation and trade have extended; European residents are gradually spreading themselves over the country; and the commercial and other transactions of life must be expected to assume a more complex character as society advances in civilization, and the elements of it become more mixed. At every step the country takes in the march of general prosperity and improvement, the duties of those employed in its civil administration become the more delicate and important, and whilst extensive efforts are making by means of an improved education to raise the qualifications of the natives of the country for the subordinate situations under government, it is a matter of paramount importance to exact from those for whom the offices of greater responsibility and control are exclusively reserved a higher standard of qualification than has yet been required of them.

Suggestions regarding it.

110. In the suggestions which we are about to submit to your Lordship on this subject we advocate not those measures which abstractedly we should consider the best, but such as we believe will be found the most effectual, consistently with a due regard to the patronage vested in the Honourable East India Company.

Mode of appointment to the civil service.

111. We think the first object should be to extend as far as practicable the field of selection for the civil service; and by adopting the principle of competition, to secure from among a large body of candidates a sufficient number of young men possessing superior talents and acquirements.

112. With

112. With this view, we propose that all nominations by the Directors of the East India Company for each season should be to the general service in the first instance; that no person should be eligible for such nomination before the age of 17; and that all so nominated should be at liberty to enter themselves as candidates for admission to the civil service. These candidates should undergo an examination, involving a test of high attainments; and on the required number declared duly qualified by the result of it, the appointments to the civil service should be bestowed according to priority in the examiners' lists. Mode of appointment to the civil service.

Those nominees who declined to compete, and those who failed in the competition for the civil branch of the service, would stand appointed to the military branch.

113. If this scheme cannot be adopted in its fullest extent, we recommend as near an approach to it as may be found practicable, and that at all events the principle of competition be preserved. Ditto.

114. The appointments to the civil service having been thus settled on the principle of superior attainments, we propose that the nominees should continue in England three years, for the purpose of further qualifying themselves for the higher stations they are destined to fill. We have fixed on 17, as the age at which school education is usually completed, and the student is prepared to profit by an advanced course of study in science and general knowledge. The additional three years make 20, the minimum age at which a civil servant would quit England for India, which we think a preferable minimum to that now established. Education in England of the civil servants.

115. The course of study to which the civil servants should devote themselves during the remainder of their stay in England is, in our opinion, history in general, and the history of India in particular; political economy; moral and political philosophy; and jurisprudence, especially that branch of it which relates to the conflict of laws. It would be advisable that a syllabus of these subjects should be prepared, in which the best sources of information should be pointedo ut. Ditto.

116. The progress of the students in these departments of knowledge should be ascertained by annual examinations; and the examiners should have full authority to reject at the final examination any one whose attainments did not reach a certain fixed standard, or whose general conduct and character were found to be unsatisfactory. Ditto.

117. It would of course be essential to the success of this plan that the standard of qualification should be rigidly adhered to, and that the Board of examiners should be so constituted as to command the confidence of all, and secure the support of public opinion in the firm and upright discharge of their duty. Ditto.

118. We do not attach importance to the study of the Oriental languages in England beyond such an elementary acquaintance with them as would accelerate future proficiency in India. It is in the latter country that the greatest facilities for acquiring this description of knowledge exist, and we think the principal part of the time spent in England would be most profitably devoted to the pursuit of European literature and science. Considering also the very limited means of instruction in the Oriental languages available in England, the establishment even of a low Oriental test might interfere with the principle which we suppose will be acted upon, of allowing the civil servants to choose their own plans and places of instruction. Ditto.

119. On their arrival in India, the attention of the civil servants should be principally directed to the study of the vernacular languages, proficiency in two of which should be required of them. Ditto.

120. Their professional studies should now assume a local character; means should be afforded them of acquiring a knowledge of the system of the internal administration of the country, and of the principles of law and equity which have regulated the decisions of the Indian courts. For this purpose the Regulations enacted for the particular presidency; the printed reports of cases decided by Her Majesty's and the Company's superior courts; and the most useful portions of the Hindoo and Mahomedan laws which have been rendered accessible to the English student by translations and treatises, should be made the subjects of lectures. And as a means of obtaining some practical knowledge of the administration of justice, the student should be required, at convenient times, to attend the trials, civil

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civil and criminal, in the Queen's courts of judicature. The courts we are recommending for the trial of the matters which are now brought before the supreme courts in civil actions at law, as well as the subordinate criminal courts proposed on a former occasion, would also be available for this purpose, perhaps with even greater advantage than the supreme courts, with reference to their more simple course of procedure.

Education in England of the civil servants.

121. Periodical examinations should be held for the purpose of ascertaining the progress made in these various branches of study; and on a civil servant passing a certain test, he should be declared qualified to take a part in public business.

Training of the civil servants on being reported qualified to take a part in public business.

122. In this stage of his noviciate, we think it very desirable that he should be afforded the best opportunities of perfecting himself in the languages, and acquiring a general knowledge of the manners, habits, feelings, and institutions of the people.

Ditto.

123. In our courts of justice the native character is seen in its worst aspect; and the unfavourable impressions which the mind of the young civilian receives from this partial view is too apt to have a prejudicial influence upon the whole tenor of his future conduct. On the other hand, first impressions drawn from intercourse with the respectable classes, and a more general survey of the people in their ordinary intercourse wirh each other, would lay the foundation for a kindliness of feeling towards them, and a reasonable consideration for their prejudices and failings.

Ditto.

124. It is chiefly at the beginning of his career, and whilst holding a subordinate situation, that the civil servant will find time for the prosecution of general inquiries, and the greatest readiness on the part of the natives to communicate their sentiments. The possession of superior office is at all times an obstacle to free communication with the people; nor would we advocate in the higher judicial functionary that familiarity of intercourse which would be useful and proper in the officers of revenue.

Ditto.

125. To the acquisition of this description of knowledge the revenue systems of Madras and Bombay are peculiarly favourable; there, the annually recurring ryotwarry settlements require a constant and local intercourse between the revenue officers of government and the agricultural inhabitants, and the minute information respecting the interests of the different classes of the village communities, the various rights in land, and the instruments by which those rights are modified or transferred, necessarily acquired in the course of such detailed arrangements, cannot but prove valuable to the future judicial officer.

Ditto.

126. We would therefore recommend for those presidencies that the civil servants, on being reported qualified to take a part in public business, should be attached as assistants to collectors and magistrates for the period of three years; that is, we would continue the initiatory system now in force there, which was introduced during the governments of Sir Thomas Munro and Mr. Elphinstone.

Ditto.

127. Regarding the junior civil servants on the Bengal establishment, we find it more difficult to come to any decided opinion. The detailed village settlements which have been for some years in progress in the Western Provinces and Cuttack, and partially in Bengal, Behar, and Benares, afford perhaps even better opportunities of acquiring practical information than the ordinary revenue arrangements of Madras and Bombay; but these settlements are now drawing to a close, and we understand that in about two years the whole will be completed either in perpetuity or for terms of 25 or 30 years. The principal business of the revenue officers will then be reduced to the simple duty of collecting the revenue and making the usual arrangements in the departments of Abkarry and Stamps; and it is only the occasional failure of a settlement, or the management of a few estates under the superintendence of the court of wards which would call for local and minute investigation. To a knowledge of the mere routine of a Bengal collector's office as conducted at the sudder station, we attach no importance as a preparation for judicial duties.

Ditto.

128. Where the charge of the police is also vested in the collector of revenue (as is universally the case at Madras and Bombay) the occasional deputation of the assistant into the interior for the purpose of local inquiries would give opportunity for acquiring information, and would operate as a check on the native officers

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officers of police. But we believe that in most districts of the Lower Provinces of the Bengal presidency the functions of revenue and police are committed to distinct officers, and the same assistant could not work satisfactorily under two superiors.

129. If sufficient employment could be found for the junior civil servants of this presidency of a nature calculated to store their minds with that general practical knowledge which we think so desirable an acquisition, we would recommend the same disposition of them, during the three years, as at the other two presidencies; otherwise we would at once commence with those selected for the judicial line, the peculiar training to which we shall presently advert, and continue it for a period of three years.

Subsequent selection for the judicial line.

130. On the expiration of the three years of mofussil preparation we would choose the ablest and most competent of the civil servants for employment in the judicial line; and as we propose that all so chosen should thereafter be confined exclusively to that line, we would, in making the selection, consult individual inclination as far as the exigencies of the service permitted.

Ditto.

131. We have not fixed upon an earlier stage in the civil servant's career as the period of selection, because it appeared to us important that it should be deferred to as late a period as possible, consistently with other considerations, to allow of the fullest development of those qualifications which should guide the government in the distribution of its agency.

Why legal instruction important for civil servants eventually attached to the Revenue Department.

132. The legal part of the education which we have proposed for the civil servants in England, and on their first arrival in this country, may be thought unnecessary for those who are eventually attached to the revenue branch of the administration; but when we consider the important functions, partaking often of a judicial character, which such officers as they advance in the service are called upon to perform, and the numerous instances in which they act as the legal advisers of government, we think the accurate acquaintance with the principles of right and wrong, and the general knowledge of the laws of the country to which such a course of study must lead, will be found of essential advantage to them.

Special training for the judicial servants.

133. For the civil servants, who, after three years of revenue practice, are set apart for the judicial branch, we would recommend at least one year of judicial apprenticeship previous to their appointment to the exercise of independent functions.

Ditto.

134. We beg to draw your Lordship's attention to a Minute recorded by Mr. Cameron, when officiating as fourth ordinary member of the Council of India, on the subject of judicial training, copy of which, and of the letter to Lord Goderich therein referred to, is appended to this address. The Minute has special reference to the judicial training of natives, but the principle is equally applicable to our purpose, except that in the case of English gentlemen the defect of moral principle insisted on in the letter to Lord Goderich, does not exist. The mode proposed by Mr. Cameron, of constituting the courts schools for judicature, appears to all of us unexceptionable; and we recommend that every civil servant, on his first appointment to the judicial line, should be attached as an official assessor to a mofussil court superintended by a covenanted European judge, or to the civil and criminal courts subordinate to the Supreme Court which we contemplate for each presidency.

Ditto.

135. It is not necessary that in this capacity his time should be exclusively occupied in assisting at the civil and criminal trials in court. There are ministerial duties now left principally to the native officers of the courts in the superintendence of which he might be beneficially employed; and we also think it very desirable that he should be occasionally deputed for the purpose of conducting local investigations connected with cases depending before the judge.

Mr. Cameron's dissent from the recommendation of his colleagues respecting the training of the judicial servants.

136. Mr. Cameron dissents from the recommendation that the civil servants, intended for the judicial line, should pass the first three years of their novitiate in the Revenue Department, and has thought it right to state his view in a separate Minute.

View of the majority of the Commissioners.

137. To the majority of the Commissioners it appears that by such employment in the Revenue Department as they contemplate, a young man would acquire a better command of the native languages, which he must of necessity be continually using, than if he were occupied during the same time in the duty of an assessor to a court without any obligation or having any need to take an active part in the proceedings as an interlocutor. It appears to them, also, that a man whose duties have brought him into contact with people of all classes, and have afforded him opportunities of making himself acquainted with their manners and habits, their ways and forms of dealing, and intercourse with each other, and the details of their economy generally, who has conversed with them freely, and is used to hear them speak without reserve, is likely to be better able to deal with a witness so as to elicit the truth from him, and to know when he has got the truth; better able to estimate the value of native documents exhibited in evidence, and to understand the merits of causes turning upon the ordinary transactions and dealings of natives among themselves; better able, therefore, in general to perform the office of a judge, than one of the same standing who has had no opportunities of becoming acquainted with the character of the natives except as it has been exhibited by those whom he has had to do with only as adverse litigants, or as tutored witnesses, although by his practice in judicial business he may have become better versed in jurisprudence, and more expert in applying its principles and rules.

Ditto.

138. They do not apprehend, however, that a young man well grounded in jurisprudence by the education proposed to be given him in England, and having in view to attach himself eventually to the judicial line, and being of an age at which he may be expected to have attained some stability of character, would altogether neglect this science during his temporary employment in active duties in other branches of the service. They would expect him rather to prosecute the study and to improve his theoretical knowledge whilst laying up a store of information and experience, which must be of the greatest service to him when he is called upon to apply that knowledge practically in the discharge of judicial functions.

On the completion of their probationary course, the judicial servants to be appointed judges of courts of original jurisdiction, thence to rise to the office of zillah judge, and afterwards to be eligible, according to merit, to the situation of sudder judge.

139. On the completion of the last stage of his probationary course, the civil servant should be eligible to the office of judge of a court of primary jurisdiction, from which he should be promoted in his turn to the situation of zillah judge of appeal; and from the most distinguished of the officers of this grade the judges of the sudder courts should be selected. The number of courts of original jurisdiction to be reserved according to this plan for the covenanted officers, should, as far as practicable, be so regulated as to insure to each three years' experience, in the trial of original suits, before his promotion to be a zillah judge.*

Modification of a recommendation connected with this subject in a former Report.

140. By thus securing to the civil servants destined eventually to superintend and control the native judicatories an appropriate training in the first place, and afterwards a due degree of experience in the administration of justice in courts of primary jurisdiction, we think a sufficient remedy will be provided for the great defect which we noticed as attaching to the present judicial systems of Bengal and Bombay. And with the full information which we have obtained in the course of our

* We have adverted in two previous notes to the manner in which the institutions which we contemplate for the improvement of the English portion of Indian judicature may be made conducive to the judicial education of the young civil servants. The subordinate civil courts will consist of several judges with various degrees of knowledge, and various amounts of salary. They will have to administer English law, Hindoo law, and Mahomedan law. The chief of each court will distribute the suits among himself and his colleagues (after the plaint has disclosed the nature of each suit) according to the qualifications of each. Now we think that when this court shall be established, young civil servants, before they are sent to administer justice in the mofussil, might officiate as inferior judges. None but the most simple suits would be confided to them in the beginning of their career, by the chief of the court, none but such suits as, according to the theory of the present system, are intended to be brought before the court of requests. There are provisions in our scheme for the transfer of suits to judges of higher qualifications if unexpected difficulties should emerge in the course of their investigation. The young civil servant will thus exercise the judicial function in such a manner that his mistakes may be prevented, by the transfer of the suit, or by consultation with his superiors, or may be set right by an immediate appeal on the spot. He will exercise his function under the eye of the College of Justice and the Government, and in the presence of the watchful and not very submissive public of the capital. He will acquire habits of attention and method, and the art of weighing evidence, and of separating law from fact.

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our present consideration of this subject, we would wish to modify on the same principle the recommendation we submitted in a late Report on the proposed change in the judicial establishments at Madras, to the effect that all original jurisdiction should be left eventually in the hands of the native judges.

Emoluments of the judicial branch of the service.

141. In order that those who have once become attached to the Judicial Department may have no cause for disappointment, with reference to the pecuniary advantages of other lines, the emoluments of it should be so adjusted as to render it on the whole the most lucrative branch of the service.

Second topic: Expediency of appointing a chief judge to each sudder court.

142. Having thus submitted to your Lordship the suggestions which have occurred to us on the first topic proposed for consideration, we proceed to the second, viz. the expediency of appointing a chief judge with superior emoluments to each of the supreme native courts.

Reasons for appointment of chief justices in England.

143. In England, the judges of the superior courts sit together, in the presence of a numerous bar, and a large concourse of spectators. In those courts there are numerous occasions, besides the pronouncing of decisions, on which it is fitting that only a single authority should speak in the name of the court. On all such occasions it is desirable that what is delivered should be expressed with propriety and dignity of language and manner, and not merely that it should be unobjectionable in substance. There are also many occasions in which decisions are pronounced, where, if the chief justice delivers his opinion on the law, or facts, correctly, and in a luminous manner, the judges who follow will be shorter in the exposition of their own views, and will frequently do no more than express a simple assent. In this manner a great deal of time is saved to courts. In England, also, the chief justices have in charge the Nisi Prius sittings at Westminster and London (including most of the great mercantile causes) in addition to their share of assize business. This is, perhaps, the most difficult duty discharged by the English judges. It may be added, that, until very recently the Chief Baron of the Exchequer discharged, alone, a large equitable jurisdiction; he at present tries all the revenue jury cases. The Chief Justice of the Queen's Bench is Coroner of England. The chief justices are usually appointed to the Privy Council; and more than one of them are commonly promoted to the House of Lords, where their services have often been of great utility upon judicial appeals, as well as other legal matters. The present Chief Justice it is believed exercises particular functions in conducting the business of the House of Lords. The chief justices are, moreover, entrusted with various *ex officio* duties of minor importance, including the apppointment to several subordinate offices.

Qualifications for those offices, and selection for them.

144. As the occupation of chief justices in England requires, rather than that of puisne judges, powers of communicating their sentiments with impressive effect in the presence of a public audience, whilst the most valuable qualifications of puisne judges are frequently not combined in any high degree with that of eloquence; so, in England, there is no difficulty in selecting for the one or other station. The Attorney-general usually succeeds to any vacant chief justiceship. The Attorney-general will commonly be a person competent to take a part in the debates of the House of Commons; at all events, he will generally have acquired distinction as a leader of causes. The talents of a leader of causes, and those of a learned and sensible junior, who, possibly, would be very incompetent to address a jury with effect, but the value of whose legal opinions was generally appreciated, will often indicate the proper person to be selected with a view to a chief justiceship or puisne judgeship. The promotion of a puisne judge to a chief justiceship is unusual; and if it were common it might tend to shake the public opinion in the independence of the puisne judges. It often happens, in England, that the puisne judges of a court have, in many trials, at Nisi Prius, acted under the control and directions of the chief justice, as their leader.

Contrast of circumstances in India, as affecting the sudder courts.

145. In India, none of these circumstances exist to affect the constitution of the Company's supreme courts. The functions of the sudder judges are confined to the judicial business before their courts. In Bengal, and Bombay, the greatest part of the civil business of these courts is disposed of by the judges sitting singly. In the Sudder Court at Calcutta, about two-thirds of the civil suits are thus disposed of; and in that of Bombay, about one half; and the same might take place at Madras under the existing law. The number of intelligent practitioners is very small; and we believe the audience, generally speaking, consists of little more than the parties interested or their agents and

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authorised pleaders, and other parties or their agents awaiting the trial of their own suits.

And the appointment of the Indian judges.

146. Nor do the circumstances of the two countries differ less with regard to the mode in which the judges are appointed. The sphere of selection for the highest judicial offices under the Company's control is limited to the civil service, in which promotion is regulated on the principle of seniority as the general rule. It is seldom that very superior qualifications are to be found in any particular judge which would render his elevation to an eminent position in the court conducive to its greater respectability, and the improvement of the administration of justice; whilst from the peculiar nature of the civil service, selection according to individual merit, unless that merit is generally acknowledged, has been found to create dissatisfaction. Indeed, it was an inconvenience of this description which induced the Government of Bengal, in 1829, to abolish the distinctive appellation of the judges of the Sudder Court; and as the duties of all the sudder judges are essentially the same, there does not appear to be any sufficient reason, while the constitution of the Sudder Court remains in other respects unaltered, for re-establishing the distinction of rank and emolument that formerly prevailed.

Proposed college of justice.

147. The highest courts in the country which we shall recommend (and which, for the sake of distinguishing them from the present supreme courts, we propose to call the colleges of justice) will consist of the judges of the supreme courts, and the judges of the sudder courts. The chief justice of the Supreme Court will become the chief of the College of Justice.

Ditto.

148. Should our recommendation on this subject meet with the approval of the government of India, the chief justice, as president of the college, will be invested with certain powers of superintendence and direction, which would give consistency to its proceedings; whilst the combination of the knowledge and experience of the English and Indian judges would tend greatly to improve the practice of the courts, and generally to raise the standard of the judicial administration.

Ditto.

149. We admit that the appointment of English lawyers to preside over courts which are to superintend all the judicial establishments is not unattended with risk; but we think, that, upon the whole, it is preferable to the appointment of judicial servants of the Company; for we think it more probable, in these days, that an English lawyer may be found free from the narrow prejudices which his professional education has, it may be admitted, a tendency to create, than that a judicial servant of the Company should be found with a mind sufficiently disciplined in the principles and distinctions of jurisprudence to watch effectually over the whole administration of justice.

Last topic: Expediency of investing the sudder courts with original jurisdiction.

150. The last subject is the expediency of investing the sudder courts with a limited extent of original jurisdiction.

Reasons against such a measure.

151. To this measure we think there are, under present circumstances, serious objections. We consider the great object of the sudder courts to be, to fix and maintain right principles; to preserve uniformity in the administration of the law; and to exercise a general supervision and control over all the inferior courts. The system of special appeals, which we have recommended in our Report of the 4th December 1841, for the better attainment of this object, would throw open the sudder courts to a large class of appeals now altogether excluded from them, and we believe the present number of judges would not be found more than sufficient to the despatch of the business so increased, even under the modification of the present practice of trying special appeals which we have suggested in the same Report.

Ditto.

152. We entirely agree with your Lordship that "no man can be capable of appreciating the value of evidence who has never heard a witness examined, and who is not well acquainted with the mode of conducting causes in courts of justice, and generally with the national character as well as the national languages; for upon the value of such evidence, and such knowledge of character and of language, the decision must in most cases depend."

Ditto.

153. In most cases the decision must depend upon these things, but not in all; and even in those cases in which it does depend upon these things, it does not depend upon these things only. In many cases it depends wholly, or in part, upon

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upon a correct knowledge of the principles of law or jurisprudence, upon the habit of applying these principles to the facts which evidence establishes, upon the habit of eliciting from the evidence (assuming it to be credible) the facts which form a proper basis for the application of the principles of law or jurisprudence.

Reasons against such a measure.

154. We now take the liberty of observing that this knowledge and these habits are what are specially requisite in an appellate judge. We admit that no man ought to be appointed an appellate judge who has not acquired practical skill in the decision of original suits.

Ditto.

155. We admit, also, that if considerations of economy do not forbid, the practical skill thus acquired by the appellate judge might with advantage be kept up by the occasional exercise of original jurisdiction, while the ordinary judges of first instance would derive benefit from the model thus exhibited to their observation.

Ditto.

156. But we hold that, as the qualities most essential in an appellate judge are not likely to be found united to an intimate acquaintance with the national character and the national languages, it will be expedient to have some judges in the appellate court whose unacquaintance with the national character and languages must be excused on account of that knowledge of law and jurisprudence, and of those judicial habits which at present, at least, can be most effectually acquired in courts of English judicature.

Functions of an appellate court.

157. There are three functions, as it seems to us, which an appellate court may perform, though it does not follow that every appellate court performs all the three. First, to say whether the evidence appears to have been properly taken and properly appreciated by the court below; if not, the course is to have it investigated afresh, either by the same or another court of original jurisdiction.

Ditto.

158. The appellate court ought never, we think, to set up its own opinion in opposition to that of the court which heard the witnesses give their evidence, further than to order a fresh investigation; but it may, upon reasonable grounds of doubt, order that the same inferior court, or another, should hear the witnesses over again, or merely that the inferior court should reconsider its finding.

Ditto.

159. The only one of these three courses known in English practice, is the second. Upon a motion for a new trial upon the ground that the case has not been properly investigated by the judge and jury at nisi prius, the court, if it assents to the grounds of the motion, orders that the case shall be investigated again by another jury. The evanescent nature of a jury makes it impossible to direct that the same jury should either reconsider its finding, or investigate the case afresh.

Ditto.

160. In the supreme courts of India, there being no trials at nisi prius, and no jury in civil cases, the analogy of English practice is preserved, as far as those important differences permit, by the court which first tried the cause ordering a new trial before itself; a proceeding which seems to be recommended by nothing but the preservation (little more than nominal) of the above-mentioned analogy.

Ditto.

161. Secondly, the appellate court has to say whether the facts of the case have been correctly elicited from the evidence (assuming the inferior judge's opinion of the credibility of the evidence to be correct.) If it thinks they have not, it should correct the error itself. This is what is done in English practice upon a demurrer to evidence.

Ditto.

162. Lastly, the appellate court has to say whether the court below has correctly applied the law to the facts. Here, again, if it thinks the court below has erred, it sets right the error without any further inquiry.

Ditto.

163. If this is a correct account of appellate judicature, the appreciation of testimony from the national character, and the demeanor of witnesses, is no part of it; though we do not deny that an appellate judge who is capable of such appreciation would bring to the decision of questions of law more of the desired acuteness

Note.—It is not everything called a fact in common speech that is a fact for this purpose "Factum vocamus omnem eventum qui ad jura vel constituenda, vel immutanda, vel tollenda valeat." Muhlenbrugh, Doctrina Pandectarum, I. 173.

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acuteness of mind, and perspicuity of judgment, than one who has not that advantage.

Commissioners request permission to submit a copy of this address to the Honorable the President in Council in reply to official references on the subject of the judicial training of the juinor civil servants.

164. In conclusion, we beg to apprise your Lordship that the question of the best mode of training the junior civil servants in the judicial department was referred to us by order of the honourable the president in court, in August* 1838, to be considered in connexion with the general system of judicial procedure; and as this address contains all that has occurred to us on the subject, we take the liberty of requesting your Lordship's permission to submit a copy of it to the Honourable the President in Council, as a formal reply to the official communication adverted to.

We have, &c.,
(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Elliott.
H. Borradaile.

(A true copy.)
J. C. C. Sutherland, Secretary.

Mr. *Cameron*'s MINUTE on the Means of educating for Judicial Functions.

THE Committee of Public Instruction suggest, as the best mode of supplying the want of official knowledge, as well in the young men educated at the public seminaries as in others, that "a certain number (say five) of native assistants on small salaries should be appointed to each district, three of whom might be placed at the disposal of the judge, and two under the orders of the revenue commissioner, the latter being available for employment in any district of the division at the discretion of that officer. The three attached to the judge might be posted," the committee proceed to suggest, "according to his judgment, either in his own court or that of the principal sudder ameen, where they would be very useful, after a short time, as confidential clerks, and they would obtain the very best practical education, especially as to details and forms for munsiffs."

Having myself, on a former occasion, been obliged to give much of my attention to the subject of preparing natives of the East for the judicial office by appropriate moral and intellectual culture, I am desirous of now stating the opinion at which I arrived; and for this purpose these papers have, at my request, been transferred to the legislative department.

The occasion which attracted my attention to the subject was the preparation of a plan for judicial establishments for the island of Ceylon, which was part of my duty as a Commissioner of Eastern Inquiry under the Colonial-office.

As the least troublesome mode of explaining my views, I annex the letter to Lord Goderich, in which I proposed, that in every court of original jurisdiction there should be a paid and permanent officer assisting the judge throughout the conduct of the cause, and giving his opinion upon every matter arising for decision, which opinion, however, should have no legal effect, and indeed no other effect than such moral influence as the learning and character of the officer delivering it, and the arguments by which he might support it, should produce upon the mind of the judge.

This proposition received the assent of the Secretary of State for the Colonies, and the plan has been gradually brought into operation at Ceylon. It is there connected with the plan of assessors which I had previously recommended; but there is, of course, no necessary connexion between them. A paid and permanent officer, with the proposed functions, might sit in every court, though no unpaid and unofficial colleagues were associated with him.

To the reasons adduced in my letter to Lord Goderich I have now only to add some remarks upon the merits of the plan, as compared with other plans which have been proposed or adopted for the attainment of the same end.

I am only aware of three such plans.

1. The plan of appointing the probationer to a clerkship or other office in a court of justice.

2. The

* Mr. Officiating Secretary Maddock's letter, No. 282, dated 13th August 1838, and No. 295, dated 20th idem.

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2. The plan of appointing the probationer a judge for the decision of small causes.

3. The plan of appointing the probationer to take the evidence upon which the judge is afterwards to decide.

1. The first is the plan which forms part of the recommendation of the Committee of Public Instruction, and it is, I think, much to be preferred to the other two; but it is liable to objections which do not apply to my proposition, and which in my judgment far outweigh the small advantage which I admit it to possess in point of economy.

For, a person employed as a clerk or other officer of court, though he does indeed witness with more or less attention the transaction of judicial business, does not himself transact it. The process necessary for coming to a correct decision, the process necessary for making a decree, does not pass through his mind; he does not acquire actual experience of that duty for which it was intended to fit him.

2. In the second plan the probationer (if it be not abuse of language to call him so), whose business it is to hear and decide small causes, does indeed acquire actual experience; but he acquires it at the expense of the unfortunate suitors, on whom his education inflicts all the misery resulting, not only from injustice, but from injustice aggravated by the fallacious promise of justice.

Moreover, as small causes are generally the causes of the poor, and large causes are generally the causes of the rich, the unseemly spectacle is exhibited of a judge learning to adjudicate well the rights of the great and opulent, by adjudicating well or ill the rights of the vulgar.

3. The third plan, that of making the probationer (if here again it be not an abuse of language to call him so) take evidence upon which the judge is afterwards to decide, is open to the objections which have been stated against both the others. It is not, indeed, open to these objections in so great a degree as each is respectively to its own share of them; but it is liable to another of very great weight, viz. that it separates two functions, those of hearing and deciding, the union of which is essential to the best constitution of a court.

The arrangement which this plan suggests for educating men to the administration of justice is such, that under it the administration of justice must be defective even though performed by the best-educated men. In the plan which I propose there is no such injurious distribution of the functions of hearing and deciding.

In that plan the probationer actually transacts judicial business himself. He acfually performs every office which he would perform if he were a judge, not even excepting the office of deciding; but his decision can do no harm. He gets all the benefits of real experience, without inflicting upon the suitors any of those evils to which judicial inexperience gives rise.

I have now only a few words to say on the economical part of the subject. I must candidly admit that the plan I propose is more expensive than any of its three competitors; for in all of them the probationer, though paid by the public, is not paid for learning the business of a judge, but for some service which must at any rate be performed, and for the performance of which the public must at any rate pay.

I submit, however, that if my reasonings are sound, the expense of training judges in the manner I suggest will be far more than repaid by the advantage of placing on every bench a man who begins his judicial career with a thorough practical knowledge of his duty. Of course, during the illness or temporary absence of the judge, the probationer will be generally competent to transact any business of routine.

The expense, too, of training judges in this manner will be really much less than it may appear at first sight. It will probably become still less as the plan works and becomes understood. It may perhaps vanish altogether in the course of a few years; for independently of any salary which may be paid to the probationer, he will have a strong temptation to accept the office in the promise which should be made to him that nothing but some moral or intellectual defect will prevent his being in due time promoted to the bench.

That such a promise will operate as a very strong inducement is made certain by experience. In England, young men are tempted by the very uncertain chance of success at the bar, not only to do gratuitously the work of other men, but pay

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100 guineas a year during two or three years, for the privilege of being allowed to do it.

Now, though it is probable that the candidates for the office of munsiff will be too poor to pay for the instruction to be thus afforded, or even to subsist without some salary, it is, I think, clear that a very small salary indeed will be sufficient from the first, and perhaps none at all hereafter will be necessary. The functions of the probationer are not such as to require that he should be well paid, as a security against bribery; it can be worth no man's while to offer him a bribe.

It is to be observed, besides, that although my plan requires an immediate expenditure of money, which the others do not, it will appear upon examination that this expenditure is is not all to be placed to the account of judicial training. I expect, from the adoption of the plan, a further collateral advantage, itself worth some pecuniary sacrifice. It seems to me that we shall have what is good in a plurality of judges, while we avoid what is evil in that arrangement.

A plurality of judges is mischievous, because the disadvantage of dividing and weakening responsibility outweighs the benefit resulting from the joint application of several minds to the same subject.

Here will be two minds applied impartially to the examination and discussion of each cause, while the legal responsibility of the decision is concentrated upon one.

The probationer, upon this plan, may be regarded in some respects as an advocate, only that instead of being the advocate of a party, exercising his ingenuity in one out of two cases to mislead the court, he will be the advocate of truth and justice, stimulated by the hope of promotion to the bench, to do his utmost for the interest of those his clients.

Two objections have been suggested to me which are certainly deserving of notice.

First, it may be objected that each suit will consume more time than it now does.

Each suit will certainly consume more time than it now does; but, before we can pronounce this to be an evil, we must know whether the time now consumed is sufficient for a thorough investigation of the case.

It seems to me that a judge sitting without colleagues, without jury or assessors, and without any effective public, is likely to be in too great a hurry. He has scarcely any adequate motive for stating to himself distinctly the grounds of the opinion which the evidence and arguments may impress upon his mind. A judge so situated must be apt to decide, without any separation of law from fact, of the sound argument from the sophistry which may have been addressed to him, and of the trustworthy from the suspected evidence which may have been adduced.

He must, I think, be prone to make up his mind upon the whole matter in the gross, just as an unpractised man makes up his mind in common life when two conflicting stories are told him; and, seeing, or thinking he sees, that one of the contending parties is right, and the other wrong, he pronounces accordingly.

This is not the proper mode of arriving at any decision, least of all a judicial decision, which ought to show what propositions the judge assumes as law, and what propositions of fact he considers to be established; and I am, therefore, of opinion that time, which will be for the most part employed on the analysis above mentioned (as will probably be the case when two men have to record their joint opinions upon a complicated matter which they have examined together) is upon the whole time well spent, even though some of it may be consumed in superfluous discussions.

The second objection is that the responsibility of the judge will be divided and thus weakened. As the opinion of the probationer will have no legal effect, the legal responsibility will not be divided. His moral responsibility will, however, be in a slight degree shared by the probationer, and in that respect weakened; but on the other hand both his legal and moral responsibility will be strengthened, because his decision will be so much more open to criticism when the steps by which he arrives at it are thus laid open.

Before I conclude, it may be proper to say a few words upon the mode adopted in Great Britain for selecting persons for a judicial office.

The judges are there invariably selected from among practitioners at the bar; but justice is there administered under circumstances so very favorable to the purity and learning both of the bar and the bench, that, however excellent the judges may have generally been who have gone through this kind of training for their

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their office, much of their excellence cannot, I think, be attributed to that training. It is rather to political and social, than to professional causes, that the lawyers of the mother country owe their freedom from pecuniary corruption; and with regard to intellectual qualities, those which insure success to the advocate who is maintaining one side of the question, are by no means the best calculated to insure a just discrimination of the merits of both sides.

Eloquence, skill in cross-examination, and readiness in taking advantage of any real or seeming flaw in the adversary's case, are indeed qualities which are capable of a beneficent application. But they are exerted at the bar avowedly and systematically without reference to the merits of the case.

Even thus exerted they do not fail to produce some good, but that is because they are generally to be found arrayed in something approaching to an equal degree both on the part of the plaintiff and defendant.

But it cannot be doubted that they are calculated to engender a habit of mind the reverse of what is desirable in a judge; a habit of mind which the advocate must throw off before he can satisfactorily perform the nobler duties of the bench.

It is not necessary that I should go into a more elaborate examination of this part of the subject, as, for a long time to come, it is very unlikely that the bar of the mofussil courts should be so much improved as to be thought advantageous seminaries for the education of judges, even by those who are disposed to attribute more merit than I do to the system of the mother country.

Since writing the above I have referred to M. Dumont's work, De l'Organisation Judiciaire, chap. ix, of which I had only a general recollection, and there I find that the plan of training judges, which received the sanction of Mr. Bentham's high authority, is that there should be a judge delegate in each court to whom the principal judge should refer such causes as he thinks fit.

It is not said how the principal judge is to distinguish the causes which he selects for reference to his delegate. Probably Mr. Bentham intended that the causes should not be selected until the pleading is completed, and the matter ripe for argument or trial.

This plan is open, in a slight degree, to the objections I have urged against the second and third of the plans examined above, and would, I fear, have a great tendency in this country to degenerate into the second plan; and therefore, notwithstanding the great name of the inventor and the merit of the invention, I still venture to prefer my own.

(signed) *C. H. Cameron.*

March 1838.

LETTER from *Charles Hay Cameron*, Esq. to the Right honourable Viscount *Goderich*.

My Lord, Chester-street, 10 August 1832.

Letter from C. H. Cameron, Esq. 10 Aug. 1832.

IN the report I had the honour to address to your Lordship on the 31st January last, I recommended that each court of original jurisdiction in Ceylon should consist of one judge and three assessors, and that the assessors should be chosen as the jurymen now are in the maritime provinces, p. 78, Ceylon Reports.

Vide Paper presented 13th March 1832, to House of Commons, No. 274.

I stated to your Lordship at some length, in that Report, the reasons which appeared to me to justify the scheme of judicature described in it. But it has since occurred to me, that by a slight modification, that scheme may be made subservient to the very important and beneficial purpose of giving to a class of native functionaries the skill and integrity necessary to render them fit for becoming judges of original jurisdiction.

If this object can be accomplished, a very great saving of expense will ensue; for the salary with which a native judge would be amply remunerated is quite trifling, in comparison with the amount necessary to tempt a competent European to undertake so laborious an office in so warm a climate, and in so distant a region.

But, independently of the economical question, it is of the utmost importance, with a view to the future stability of our dominion in the East, and the improvement of our native subjects in general, that the higher classes among them should be rendered morally and intellectually competent to fill offices of trust.

What I now propose is, that one of the three assessors in each court of original jurisdiction should be a permanently official person, receiving such a moderate

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salary as will be necessary to remunerate a native of respectable station for giving up his whole time to the public.

It would be scarcely worth the while of any suitor to attempt to bribe or intimidate a functionary having so little power to affect the fate of the cause, except by reasons founded in law and justice; and as all the functions of the official assessor will be performed under the eye of the European judge and public, an attempt on his part to sacrifice justice to his private interests could hardly end in anything but detection and disgrace.

Here, then, will be a public servant, obliged by his office to revolve constantly in his mind the maxims of law and morality, and to assist, by his opinion and advice, in the application of them to the real business of life, who will at the same time be removed, by his peculiar position, from all temptation to pervert those maxims to purposes of chicane, fraud, or oppression.

It seems difficult to imagine a situation better calculated to strengthen the principles of morality, by exercising them in the solution of real and practical questions, and at the same time to avoid the mischiefs which might result from the insecure hold which those principles have hitherto acquired over the minds of the natives in general.

A native who has for some years been subjected to this discipline, and who has gone through his noviciate with credit, may, I think, be very safely placed in the more arduous and responsible office of a judge of original jurisdiction, and by such an appointment four-fifths of the salary necessary to remunerate a European judge will be saved to the public, the honourable ambition of the upper classes of natives will be safely gratified, and the great mass of the people will be bound by ties of affection to a government which ceases to withhold offices of power and emolument from its native subjects, as soon as they become qualified to fill them with advantage to the native community.

I have, &c.

(signed) *C. H. Cameron.*

MINUTE of Mr. *Cameron*, on the subject of the Recommendations contained in Paragraph 126.

1. UPON this recommendation I have the misfortune to differ from my colleagues. I would have the time, which they think should be passed in the revenue and police departments, occupied in sitting as an official assessor at the presidency or in the mofussil, and in performing such ministerial duties as the judge may properly delegate.

2. It is said that in India, and particularly in the presidencies of Madras and Bombay, a young civil servant, who has passed some years in the revenue department, makes a better judge than one who, under the present system, has been always employed in the judicial department.

3. This proposition is proved by so many and such competent witnesses, that I cannot refuse my assent to it.

4. But under the present system there is nothing that can be properly called judicial apprenticeship; excepting the appeal (and the appeal considered as a means of instructing inexperienced judges is a most defective instrument) there is nothing to correct the erroneous notions which a young man may fall into at the commencement of his judicial career, and it is consequently probable that many of those erroneous notions may become inveterate.

5. But in our scheme of official assessors there is a real apprenticeship under a competent instructor alway present, and ready to remove the false impressions which might otherwise mislead the beginner.

6. I do not, therefore, hold the proposition which I admit to be proved by testimony, to be conclusive of the present question, and with respect to certain arguments which I have seen used in support of that proposition, and which if sound, would be conclusive of the present question, I think I can show that those arguments involve a great and very dangerous, because very plausible, fallacy.

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7. The fallacy is that of not distinguishing between the knowledge which a judge ought to bring into court, and the knowledge which he ought to acquire in court, through the various instruments of evidence; or, in other words, of not distinguishing between jurisprudence and the several subject-matters to which the principles of law and justice are applied by means of jurisprudence.

8. I admit that a knowledge of the several subject-matters which he has to deal with, would be useful to a judge, if he could acquire that knowledge without sacrificing time which ought to be occupied in the study of law and jurisprudence. But believing that such knowledge cannot be acquired without making that sacrifice, I think upon the whole such knowledge is not useful to a judge.

9. With regard to such subject-matters as only appear at intervals in courts of justice, there is probably no difference of opinion among thinking men. No one probably would contend that a judge ought to make himself a good chemist or a good navigator, because he may have occasionally to decide suits for infringing a chemical patent, or for running down a ship. But in the courts of the East India Company so many suits relate to subject-matters connected with the revenue system of the country, that men of great and deserved reputation have thought a judge ought, on that account, to have a practical knowledge of that system.

10. An aspirant to a seat on the bench of these courts ought certainly to learn the revenue law which he is to administer. He ought also to learn, by constant attendance in court, how that law is to be applied to the affairs of men. But that he should, on this account, go through such an apprenticeship as would fit him for the discharge of a revenue office, is to require something of him which cannot be attained without a very serious interruption of his properly judicial education.

11. Let us consider a question of the same kind where there is no authority of respected names to withdraw our consideration from the mere reason of the thing.

12. There is in the county of Cornwall a court called the Court of the Stannaries, in which all the suits arising out of the business of mining are decided. How should an aspirant to the bench of that court be educated? I should say he ought to learn the general law of England, and the particular law of the mining districts by reading, and so much of the business of mining as may be thought necessary to him by sitting as an official assessor to the present judge. He will thus acquire at the same time a practical knowledge of Cornish mining, so far as it forms the subject-matter of lawsuits, and of law as applied to Cornish mining; whereas, if he were sent for three years to acquire practical knowledge under the superintendent of a copper mine, it is to be feared that there would be an irreparable hiatus in his judicial pursuits.

13. The grounds, however, on which my colleagues recommend a revenue apprenticeship for judicial officers, are different from those of which I have been endeavouring to expose the fallacy.

14. To them "it appears that by such employment in the revenue department as they contemplate, a young man would acquire a better command of the native languages, which he must of necessity be continually using, than if he were occupied during the same time in the duty of an assessor to a court without any obligation, or having any need to take an active part in the proceedings as an interlocutor."

15. As the official assessor is bound to express an opinion upon the case, and as he is liable to be consulted by the judge at any moment during its progress, it seems to me that the shame of being obliged to confess, or of letting it be seen in public that he does not understand what is said, would be a very powerful stimulus to the acquisition of the language in which the proceedings are conducted, such a stimulus as I should suppose none but the incorrigibly idle and worthless could disregard.

16. It also appears to my colleagues that "a man whose duties have brought him into contact with people of all classes, and have afforded him opportunities of making himself acquainted with their manners and habits, their ways and forms of dealing and intercourse with each other, and the details of their economy generally, who has conversed with them freely, and is used to hear them speak without reserve, is likely to be better able to deal with a witness, so as to elicit the truth from

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from him, and to know when he has got the truth; better able to estimate the value of native documents exhibited in evidence, and to understand the merits of causes turning upon the ordinary transactions and dealings of natives among themselves; better able, therefore, in general, to perform the office of a judge, than one of the same standing who has had no opportunities of becoming acquainted with the character of the natives except as it has been exhibited by those whom he has had to do with only as adverse litigants, or as tutored witnesses."

17. If the question were simply which of these two men is likely to know most of the natives generally, I should not probably have much difficulty in giving the same answer as my colleagues would give; but the question is, which of these two men is likely to know most of the natives, considered as "adverse litigants and tutored witnesses"? To that question I am compelled to answer, "he who has devoted his time to the study of them in that particular character, under the advice and correction of a man who has already acquired expertness in the process of examination, and sagacity in estimating the results."

If it should be objected to my opinion that the popular theory of the jury is opposed to it, I can only answer that I hold the popular theory of the jury to be fundamentally and completely erroneous.

July 1842. (signed) *C. H. Cameron.*

(True copies.)

East India House,
26 May 1843. (signed) *T. L. Peacock,*
Examiner of India Correspondence.